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THE OFFICIAL REPORT
OF THE
TRIAL
OF
JOHN O'NEIL
FOR THE MURDER OF
HATTIE EVELYN McCLOUD,
IN THE
SUPERIOR COURT OF MASSACHUSETTS.
FROM NOTES OF THE OFFICIAL STENOGRAPHERS.

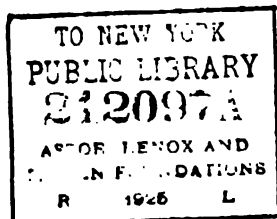
PUBLISHED BY THE ATTORNEY-GENERAL,

UNDER CHAPTER 214 OF ACTS OF 1886.

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1901.

EN



212097A

Chap. 214, Acts of 1886.

AN ACT

PROVIDING FOR PUBLISHING REPORTS OF CAPITAL TRIALS.

Be it enacted, etc., as follows:

SECTION 1. The attorney-general, with the approval of the governor and council, may prepare and publish such reports of capital trials in the Commonwealth as he deems expedient for public use, to be distributed one copy each to the various public and law libraries of the Commonwealth, and the balance may be sold, or otherwise disposed of, at the discretion of the secretary of the Commonwealth: *provided*, that not more than fifteen hundred dollars shall be expended in any one year in carrying out the provisions of this act.

SECTION 2. This act shall take effect upon its passage.

Approved May 14, 1886.

Commonwealth of Massachusetts.

COUNCIL CHAMBER, BOSTON, Jan. 12, 1898.

Ordered, That the Attorney-General be authorized to prepare and publish a report of the capital trial of John O'Neil, as provided by chapter 214 of the Acts of 1886.

Adopted.

EDWARD F. HAMLIN,
Secretary.

SECRETARY'S DEPARTMENT, BOSTON, Jan. 12, 1898.

A true copy.

WILLIAM M. OLIN,
Secretary of the Commonwealth.

PREFATORY NOTE.

The Attorney-General has been assisted in the preparation of this volume by Frederick L. Greene, Esq., of Greenfield. Mr. Greene also rendered valuable service to the Commonwealth in the preparation and conduct of the trial of the case.

REPORT
OF THE
TRIAL OF JOHN O'NEIL FOR THE MURDER OF
HATTIE EVELYN McCLOUD.

JOHN O'NEIL, indicted for the murder of Hattie Evelyn McCloud by the grand jury for the county of Franklin, in March, 1897, was put on trial the nineteenth day of July, 1897.

The court, consisting of Chief Justice MASON and Justices FESSENDEN and SHELDON, came in at 9 o'clock in the morning.

Attorney General HOSEA M. KNOWLTON, District Attorney JOHN C. HAMMOND and FREDERICK L. GREENE, Esqs., appeared for the Commonwealth; and CHARLES J. PARKHURST, Esq., ENOCH H. BEER, Esq., and FRED F. DOWLIN, Esq., for the defendant.

The names of persons summoned as jurors were called, and those persons responded.

Mr. HAMMOND. May it please the court: At a recent special sitting of this court an indictment was found for murder against JOHN O'NEIL, the prisoner at the bar, on which he has been arraigned, and to which he has pleaded that he is not guilty; and I now move the impanelling of a jury to try the case, and that the usual statutory questions be asked of the jurors called.

Mr. BEER. The defendant would like to have jurors summoned from the towns of Shelburne and Buckland passed over for the present, and the counsel for the Commonwealth have been informed of that desire, and have willingly consented.

MASON, C. J. The court desires the attention of all persons summoned as jurors, before the statutory questions are put. The court desires to call the attention of persons summoned as jurors to the

questions which will be put to them. The questions which will be put to you under the requirements of the statute have been interpreted by the supreme judicial court, and are to be understood and answered as thus defined. The first question, with reference to kinship to the prisoner or the deceased, requires no explanation. Nor does that with reference to interest in the cause. The questions relating to opinion expressed or formed, and bias or prejudice existing, refer to something more than vague impressions from casual conversation with others, and from rumor or newspaper reports. They refer to opinions upon the merits of the issues to be tried which would be likely to cause bias, or prevent a candid judgment of testimony; and if you are conscious of any bias or prejudice, either in favor of or against the prisoner, which would prevent your treating the cause fairly, and hearing impartially the testimony which may be presented, you should so declare by an affirmative answer. But you are not to magnify vague impressions formed upon rumor, or casual information, into serious opinions. The question with reference to the death penalty has for its object that no person shall be required to violate his conscience, and that the government shall not be required to submit its case to jurors unable to return a true verdict. The question is, not whether the juror approves or disapproves the death penalty. There is no logical connection between the most decided disapproval of the death penalty and the determination of the guilt or innocence of one charged with a capital crime. The most fervent believer in the death penalty has no right to convict upon insufficient evidence, and the most earnest opponent of that form of punishment has no right to acquit one who is proved guilty. The statute respects conscientious scruples, even when without logical basis, and recognizes the infirmities of the human mind as they are found in common experience. There are minds which do not practically separate things which are in themselves distinct, and cannot disconnect a finding of guilt, when clearly proved, from the penalty which the law fixes, but do feel burdened by the responsibility for consequences which they feel ought not to follow such finding. If any of you are conscious of opinions with reference to the death penalty which deprive you of ability to try the question of guilt, and render you unable to render a true verdict, if a true verdict should require conviction, the law does not force your conscience nor permit you to endanger an impartial trial by sitting as a juror but permits and requires an affirmative answer to this question. I need not remind you that you answer these questions under oath not as you might wish to answer them to escape a painful responsibility, but as your own conscience tells you the truth requires. Jurors may be called in the usual way.

Mr. KNOWLTON. Has anything been said to your Honors about the Buckland and Shelburne Falls jurors?

MASON, C. J. The request has been made that they be omitted.

Mr. KNOWLTON. So far as the impanelling of jurymen is concerned, the Commonwealth is content that the jurors from Buckland should be passed over. The case of the Shelburne jurymen stands somewhat differently, as I am informed. All of the jurymen from Shelburne, with perhaps one exception, live over the mountain, this side, and are more nearly connected with Greenfield in their business and social relations than with Shelburne Falls. We do not desire to be understood as agreeing wholesale to the exclusion of those men.

MASON, C. J. How many jurors have been summoned from Shelburne?

Mr. KNOWLTON. Four. The Commonwealth does not desire to be strenuous, but I feared we might be misunderstood as to our attitude in that respect.

Mr. BEER. If your Honors please, Shelburne and Buckland are adjoining towns, and the main part of the town of Shelburne and the main part of the town of Buckland are separated merely by the river, and the most of the trading of the Buckland people is done in Shelburne Falls, and the most of the people of Shelburne dwell around the houses or the shops of the factory buildings of Shelburne Falls; and, as we understand it, Shelburne Falls proper, the inhabited part of Shelburne Falls, is only about half a mile from the scene of this tragedy and all the people there are running to and fro, and would be more or less impressed, we fear prejudiced.

Mr. KNOWLTON. I agree with all that has been said, if it turns out when a jurymen is called from Shelburne that he is a frequenter of, or trader or visitor at, this village. I am informed that these jurymen have no more real connection with Shelburne Falls than with any other town.

MASON, C. J. The Buckland jurors may be laid aside. If the attention of the court is called to the question, if any of the Shelburne jurors live in that village, or are so associated with reference to that village, as to make it objectionable, the case will be considered separately, and the court will see, when the evidence appears, that such juror is questioned with reference to what part of Shelburne he lives in, and perhaps we can avoid the difficulty by taking out only the jurors from Buckland.

THE CLERK. John O'Neil, you are placed at the bar to be tried, and these true men whom I am about to call are to pass upon the issues between you and the Commonwealth. You have the right to challenge twenty-two peremptorily, and so many of the others as you have good cause to challenge.

The persons summoned as jurors were then interrogated by the chief justice in the usual form, and the following were duly sworn : —

1. WILLIAM N. WASHBURN, *Foreman*, Greenfield.
2. VICTOR D. BARDWELL, Whately.
3. EUGENE C. BARTLETT, Orange.
4. B. FRANK BOND, Orange.
5. JOHNATHAN E. DAVENPORT, Colrain.
6. HENRY W. HALE, Greenfield.
7. ROBERT H. HAMILTON, *Montague*.
8. WILLIAM L. HARRIS, Deerfield.
9. JOHN D. PORTER, Orange.
10. CHARLES E. SMITH, Leverett.
11. CHARLES E. STEBBINS, Deerfield.
12. SANFORD W. WEATHERHEAD, Northfield.

All answered the usual questions in the negative except in the following instances : —

Robert H. Hamilton called as a juror, and sworn. He answered the statutory questions in the negative with one exception.

Q. Have you formed or expressed any opinion in relation to the case? A. I have.

Q. Are you a constable? A. No, sir.

Q. You say you have formed opinions? A. I have.

Q. Are they such that you are now sensible of any bias or prejudice with reference to the cause? A. No, sir.

Sworn as a juror.

William N. Washburn called as a juror, and sworn. He answered the statutory questions in the negative, with one exception.

Q. Have you expressed or formed an opinion in relation to the case? A. I have formed an opinion.

Q. Such opinions as you have formed, would they in your judgment prevent your weighing the testimony impartially in this case? A. No, sir.

Q. Are you a constable? A. No, sir.

Sworn as a juror.

Henry W. Hale called as a juror, and sworn. He answered

all the statutory questions in the negative, giving a special answer to one as follows : —

Q. Have you expressed or formed any opinion in relation to this case? A. Not as the court explains.

Q. Are you a constable? A. No, sir.

Sworn as a juror.

Emerson P. Goodell called as a juror, and sworn. He answered the statutory questions in the negative.

Q. Are you a constable? A. No, sir.

Q. What is your age? A. Seventy.

MASON, C. J. I suppose that the age furnishes a ground for challenge for cause. It is not necessarily a disability of the juror to serve, but it is a cause for challenge if either side objects on that ground.

MR. KNOWLTON. In this instance, I think the Commonwealth had better exercise its right to challenge.

MASON, C. J. The juror will step aside.

F. M. Simpson called as a juror, and sworn. He answered the statutory questions in the negative, except as follows : —

Q. Are you related to the prisoner at the bar or to Hattie Evelyn McCloud, the deceased? A. By marriage to Mrs. McCloud; a distant relation.

Q. What is the relationship? A. Mr. Crittenden's mother and my wife's father were first cousins.

Q. Have you expressed or formed any opinion with relation to the case? A. Yes, sir.

Q. Are you a constable? A. No, sir.

Q. You say you have formed opinions. Would such opinion as you have formed in your judgment prevent your weighing impartially the testimony in the case? A. No, sir; I do not think so.

MASON, C. J. While there is a remote connection by marriage, we do not think it is necessarily a bar to the juror's serving. If counsel desire to consult further upon the point, they may do so.

MR. KNOWLTON. Perhaps, in order to have the trial as impartial as possible, the Commonwealth will make no objection to that being regarded as a reason for the juror not serving.

Challenged for cause.

The first challenge by the defendant was as follows : —

Gilbert E. Jones called as a juror, and sworn.

MASON, C. J. Are you related to the prisoner at the bar or to Hattie Evelyn McCloud, the deceased? A. No, sir.

Q. Have you any interest in this cause? A. None.

Q. Have you expressed or formed an opinion in relation to it? A. No, sir.

Q. Are you sensible of any bias or prejudice in relation to it? A. No, sir.

Q. Have you any opinions which would preclude you from finding a defendant guilty of an offence punishable with death? A. No, sir.

Q. Are you a constable? A. No, sir.

MASON, C. J. The juror stands indifferent.

Mr. KNOWLTON. The Commonwealth does not challenge.

Mr. BEER. Defendant challenges.

MASON, C. J. In this case the challenge should be made personally by the prisoner.

THE PRISONER. I challenge him.

MASON, C. J. You may step aside.

Seventy-five persons were interrogated in all, of whom twenty-five were excused by the court on account of age, bias, expression of opinion, religious scruples, the holding of the office of constable, or residence in Shelburne Falls. Sixteen were challenged peremptorily by the Commonwealth, and twenty by the defendant; twelve were sworn as jurors, and two were challenged by the Commonwealth for cause.

MASON, C. J. It is the usage in this Commonwealth in capital trials that juries should be kept together and not allowed to separate after once impanelled until they have completed their duty. To enable you to communicate with your friends, and make such arrangements as are necessary for your comfort during such seclusion, you may now retire and take a recess.

Jury takes a recess.

Mr. KNOWLTON. If your Honors please, as your Honors well know Mr. Hammond, the learned district attorney, comes into this case under considerable disadvantage. His broken limb is in such condition that it gives him at present some pain, he has some difficulty in getting around, and it may at any time cause him discomfort to such an extent that he will not be able to take his full share of the work. Mr. Frederick L. Greene has given much attention to the case, and it would be very gratifying if the interests of the Commonwealth could be furthered by his being appointed special assistant for this occasion. For example, there is a view we shall ask for, if the court

shall see fit to grant it, to be taken, and Mr. Hammond of course is obviously disqualified for that work. I very much dislike to take it; I have been all over the ground, and know it thoroughly; and if Mr. Greene should be appointed, I should ask that he be designated to do the pointing out. There may be some parts of the trial where Mr. Hammond's condition is such as to need relief, and Mr. Greene could assist. I have not mentioned this matter to my friends; have not had an opportunity to see them before.

MASON, C. J. Do the defence desire to make any suggestion as to this request?

Mr. PARKHURST. If your Honor please, the defence are most happy to acquiesce in the suggestion.

MASON, C. J. He will have no official authority, but all his acts will be supposed to be performed under the direction of the prosecuting officers, and upon their responsibility. The question whether more than two may take part in the proceedings of the trial itself, may be decided on the exigency of the occasion. The matter of a view stands somewhat differently from the trial itself.

Mr. KNOWLTON. Should he be sworn?

MASON, C. J. I think he should not be sworn. It appears to be according to the precedent in the Knapp case that he should be an assistant under the prosecutor. There is no provision for the appointment of an assistant district attorney.

Mr. KNOWLTON. This may be a convenient time to present the motion with reference to a view. I think it is not opposed, although I am not authorized to say it has been consented to. We have very accurate maps, — I now am authorized to say that my friends agree to it. Of course I understand that it still requires the assent of the court, and the order of the court.

MASON, C. J. Do we understand that the defence requests a view?

Counsel for defendant assented.

Mr. KNOWLTON. We have very accurate maps, which will be sworn to and put in evidence. But I have found upon personal examination of the place myself that maps fail utterly to give any guide whatever to the elevation. It is remarkable. To my seashore eyes it is something unique. I suppose it is not unusual here, but it is of such a character that nothing short of an actual view would enable us to understand well the evidence. For example, the road up the hill where the tragedy is said to have occurred appears on the map as a devious road, running towards the westward. Upon personal inspection, it is a very steep declivity, and a great deal of the evidence would be much better understood for that reason alone. In

addition to that, there are many objects which I am advised will be mentioned in the evidence, — stores, buildings, streets, — which I think there is no doubt the jury would get a much better idea of after having seen the place itself and having had those things pointed out. As to the opportunity for a view, the place is something like ten miles from here, ten or twelve miles, by carriage road, and may be reached by a carriage in an hour and a half ride. The only train that goes to-day goes at 3.40, twenty minutes of 4; it takes half an hour. There is no convenient train back. It was the suggestion of the district attorney that perhaps it would be well for the jury to come back by a barge, which can be provided, and it will depend something upon the time when the view is taken whether it will be more convenient for the jury to go in the barge or in the cars. Either way will give them time enough.

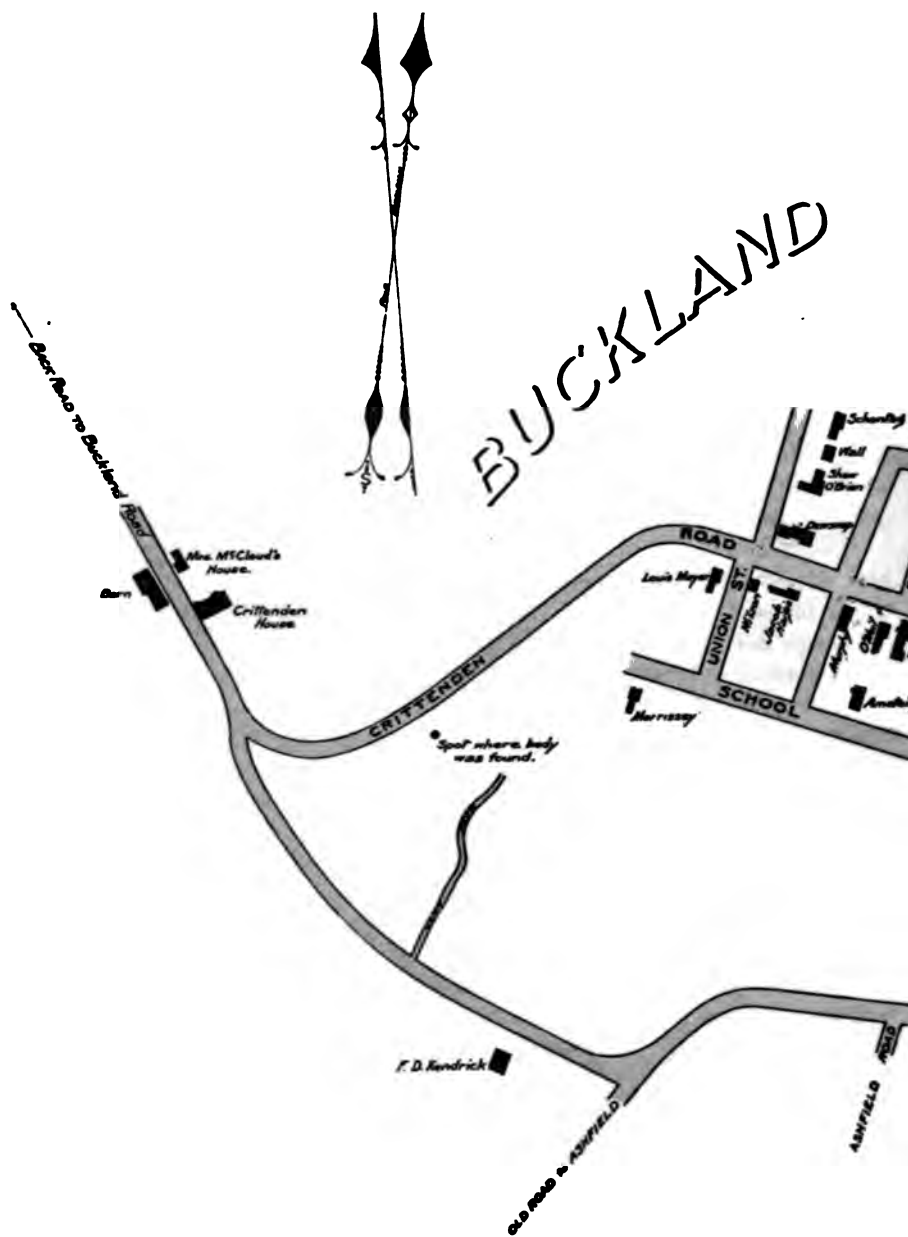
While I am on my feet, so that I may say all that is to be said about this motion before your Honors pass upon it, I would say it would be the preference of the district attorney, who will open this case, to open so far as may be useful to the jury for understanding the view, reserving his full opening of all the evidence, and of the case generally, to the time when the jury gets back from the view. That, of course, is to be decided by your Honors. I have suggested this to our friends on the other side, and they have thought that perhaps one of their number would like to make something in the nature of an opening for the same purpose, indicating what would be pointed out. Of course in all these matters we are subject to your Honors' directions, but I thought it might be well to suggest the desire of counsel.

MASON, C. J. If the request for a view is granted, would it be convenient to come in at half-past 2? That would perhaps give time for the openings, and then you could reach the train.

Mr. KNOWLTON. I am not sure, your Honors. I do not know how long you wish to keep the jury out. The opening preliminary to the view would be a very brief one. Five or ten minutes would be all the district attorney would require. I thought I would explain to Mr. Beer that it is no attempt on our part to have the advantage of two openings, but to enable the jury to get that comprehensive appreciation of the locality, as to enable them to understand what the view is about, so as to make the view more intelligible when they get there.

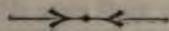
MASON, C. J. If convenient arrangements can be made so that it will not be a hardship for the jury, the court will be inclined to grant the view. I distinctly understand that it is not to be complicated with any request for the defendant to accompany the jury on the view.

Mr. BEER. Not personally.





PLAN SHOWING



SHELBURNE FALLS AND VICINITY

Surveyed and Compiled by

HYDE & SHERRY, CIVIL ENGINEERS,

15 Court Square, Boston, Mass.

February-June 1897.

Scale 80 Feet to an Inch.

Note:—The scale of this reduced plan is about 418 feet to an inch.



The court sends for the jury to be returned into court, and they return into court.

THE CLERK. Gentlemen of the jury, please answer to your names. The crier will count as they answer.

The clerk then polled the jury, and all responded to their names.

THE CLERK. John O'Neil.

The prisoner stands up.

WILLIAM N. WASHBURN, the court appoint you the foreman of this jury for the trial of this indictment.

Gentlemen of the jury, hearken to an indictment found by the grand inquest of the body of the county of Franklin against the prisoner at the bar:—

COMMONWEALTH OF MASSACHUSETTS.

FRANKLIN, ss:

At the superior court, begun and holden at Greenfield, within and for the county of Franklin, on the first Monday of March in the year of our Lord one thousand eight hundred and ninety-seven.

The jurors for said Commonwealth, on their oath present, that John O'Neil of Buckland, in the county of Franklin aforesaid, on the eighth day of January, now last past, at Buckland aforesaid, in the county aforesaid, in and upon one Hattie Evelyn McCloud, feloniously, wilfully and of his malice aforethought, did make an assault, and with the hand of him, the said John O'Neil, then and there by him, the said John O'Neil, placed and pressed upon the neck of her the said Hattie Evelyn McCloud, he, the said John O'Neil, did then and there feloniously, wilfully and of his malice aforethought, choke and strangle her, the said Hattie Evelyn McCloud, of which choking and strangling she, the said Hattie Evelyn McCloud, then and there died.

And so the jurors aforesaid, upon their oath aforesaid, do say that the said John O'Neil the said Hattie Evelyn McCloud did then and there in manner and form aforesaid, feloniously, wilfully and of his malice aforethought, kill and murder, against the peace of the Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

ARTHUR A. SMITH,
Foreman.

JOHN C. HAMMOND,
District Attorney.

THE CLERK. To this indictment, gentlemen, the prisoner at the bar has pleaded not guilty, and for trial put himself upon his country, which country you are. You are sworn to try the issue. If he is guilty, you are to say so; and if he is not guilty, you are to say so, and no more. Good men and true, stand together and hearken to your evidence.

Two deputies sworn to care for the jury.

MASON, C. J. Recess will now be taken until half-past 2.

AFTERNOON SESSION.

THE CLERK. Gentlemen of the jury, please answer to your names. The crier will count as they answer.

The clerk polls the jury, and they respond to their names.

THE CLERK. John O'Neil.

The prisoner responded.

Opening for the Commonwealth for the purpose of a view, by John C. Hammond, Esq. : —

If the court please, and gentlemen of the jury, we will take a few minutes in making such suggestions concerning the location and concerning this map (which at the present moment, we will take as a chalk or as an illustration of the streets), as may be supposed to assist you in fixing your minds upon the objects of interest and importance when at a later hour in the afternoon you take a view.

As you go to the village of Shelburne Falls by train, and go along westerly up the valley of the Deerfield River, you will reach the village at the point which is indicated on the map as the depot. Then, as you begin to observe the objects of interest, you will naturally go out to this point, the grade crossing of the railroad and Ashfield Street. There and at every moment after you alight from the cars, your minds will be impressed with the fact that the peculiarly uneven country is a very important feature to recollect. The map shows a perfectly flat country. Many of you may be aware now of the relation of the streets to one another and to the valley; and one fact that you will notice is that the valley is a narrow one, the hill rising rapidly in this westerly direction towards what is called the Crittenden road, rising from the level spot on the Shelburne side, again into the heights of the hills beyond. The facts that the country is uneven, and that the streets that lead out of the village towards

Crittenden's have their steep declivities, all have their bearings upon the relations of the parties and the relations in which the witnesses stood towards the facts on which there may be evidence.

Now, suppose you go along by the railroad station, as you come to the crossing of Ashfield Street, as you look down to the bridge, you look down a considerable hill, and as you look toward Green Street, you look up a considerable hill, and you will notice that there are three streets leading from the valley street or Ashfield Street, going to the west, — School Street, Green Street and Clement Street. Then suppose you go down the hill toward the village and come to the corner of Clement Street. You will find that there is a store which is called Ward's store, and that that corner is commonly called Ward's corner. That will be of some importance in connection with the location of witnesses and of parties, so that you will, when you come to Ward's corner, bear in mind the location of it.

As you look up Clement Street, you will see that the street goes under the railroad. We have a grade crossing at the intersection of Ashfield Street and the Fitchburg Railroad, but at Clement Street the highway goes under the railroad.

Going on from that place, you will notice that near the corner is an entrance to what will be mentioned to you as Odd Fellows Hall, from the fact that some little evidence connects itself with that as a location. Go on beyond, and you will notice that Amstein Brothers' store is there, directly opposite the bridge, a grocery store, which has an important bearing on some of the facts of which mention will be made. Beyond is a Methodist church. As you go down this street, you will notice that it is a State road, and is called the "State road" (leading to Buckland) on the map, and you will notice that going up that way; and very likely you will not go any farther, nothing calling your attention to anything farther up the State road toward Buckland.

Suppose, now, you were to go up Clement Street, concerning which location there is evidence, and to which location you will have your attention called in the evidence.

Going up Clement Street, you will notice there is a cross street called Sears Street, and you will notice there is a cross street called Prospect Street; and this one here, if I recollect right, is called Hill Street; and then, looking up Green Street, or going up it, as may be found convenient, you will find there is a break in the street; there is a ledge of rock so steep and so high that the street does not continue. No vehicles can go up there; there is only a foot-path up over the ledge, and the word "ledge" is marked on the map. Beyond that you will see it is marked as the Crittenden road. If you are up at this point, notice the electric lights, where they are located, and bear in mind as well as you can the location of the buildings; and if

you should go up on the Crittenden road, you will notice what kind of a road it is. The Crittenden road leads not only steeply up the hill, but leads along the side of the hill, so that towards the south it falls off pretty rapidly into the valley. From the side of the road towards the south there is a considerable declivity, and from the side of the road towards the north considerable of an ascent, — that is, it skirts a sloping hill.

You will notice on both sides of the road, after you get out of the village, that it is wooded. On the lower side most of the way there is a bank wall. There is a heavy growth of not very large wood, but a heavy thick growth which shuts out pretty well the land along there. You will notice as they are pointed out to you the one or two openings, coming along to a point that will be pointed out to you going into the valley, the spot where the body of the deceased Mrs. McCloud was found. You will notice its relation to the road. And, going on beyond that to the fork of the roads, note the location of the home of Mrs. McCloud, and the home of her father, Mr. Crittenden. And the location of the valley road here, the location of the wood road that leads in, well in, towards that spot, the location going down what is called the valley road, the old road to Ashfield, the Ashfield road, — the present one, — and the street to the Catholic church, may be all noticed for the sake of taking in the location.

Suppose you then come back to the bridge; and we will bear in mind that Bridge Street bears an important relation to some of the evidence in this case; if you pass over, you will notice the location of the bridge. The bridge and Bridge Street run nearly east and west. Deerfield River comes down through the village to the north, turning a right angle and going to the east. The bridge is at right angles with the upper part of the river, and parallel with the lower part. Passing over the bridge, Joel Thayer's store and Haller's pool room are important locations. Going further, you will notice the location of the post-office, location of the Shelburne Falls House, location of the street here called Water Street, which locates itself in connection with the cigar store, with the blacksmith's shop, eating house, and the rear driveway which leads in towards Frost's barn. These different locations will be alluded to in the evidence. You can see them upon the map, but the advantage of having seen the ground I trust will so emphasize them in your minds that you will take in the effect, with the elevation of the different streets, one above the other. You will notice that the main street of Shelburne Falls is nearly level, and will note the location of the post-office and the livery stable barn and Haller's pool room (where many of the witnesses were), so that after the view is taken, and the mind impressed with the location of the depot and of the hillside to the west-

ward overlooking the village, it may remain with you as a picture. Note, also, the location of the home of the prisoner, John O'Neil, the location of the neighboring house in connection with the home of Mrs. McCloud, and the location of the town down in which she was doing her trading, and her way home. Nothing further occurs to me in this connection in reference to the map. In reference to the other localities, I may address you to-morrow.

Opening for the defendant for the purpose of a view, by
FRED F. DOWLIN, Esq. :—

May it please your Honors and gentlemen of the jury: My brother has indicated to you the way to Greenfield. You will notice here this street at the westerly side of Ashfield Street, and as you pass out here to the grade crossing, and as your natural way will be from Ashfield Street to what is called the State road, just before you come to a building which he has indicated on the map as Ward's store, you will notice that in front of this building which is shown as the Woodward House is a stone wall that extends from the corner of Clement Street to the southerly boundary of the land of the Woodward House. You will notice on the southerly side of the Woodward House lot a driveway which leads from Ashfield Street up across the lawn of the Woodward House, along the south side in front of the stables of the Woodward House; and by following that driveway up, you will come where you will see the bar room of the Woodward House, in which business was being done at the time when the crime is alleged to have been committed. You will take particular notice of its closeness to the railroad track, and of the location of the door to that bar room, and of the stables, to the driveway, and to the bar room. Then you will notice that there is another driveway which runs along the east side of the Woodward House and comes out on Clement Street. And you will notice that just as you pass down by Ward's store, and along here [showing] by this building, indicated as Amstein's store, and as you cross the bridge here [showing] you will take particular notice of the length of that bridge, and the distance from Ward's store to the Shelburne side of the bridge. You will notice that on the easterly abutment of the bridge is an iron railing that extends from the bridge proper to the Joel Thayer building, the first building east of the bridge itself; and directly across the street you will notice a building in which there is a tin shop called Knowlton's tin shop; and as you pass along up street you will notice that the electric car tracks come down what is called Water Street from Colrain, and run across Bridge Street onto the west side of what is called Haller's pool room building; and you will notice that on the west side of this building are two doors

that open into the pool room. Then passing down the extension of this Water Street where the electric cars are, you will pass along by a shoe store in the same building, called Joyce's shoe store. Then you will pass up a little alley way there [showing], and notice another door opening to the east of that pool room; and directly across the little passage way you will notice some out-buildings, and the relation that those bear to these buildings we request that you bear in mind. And as you come out from this little alley way on to Bridge Street again, you will notice the location of the Shelburne Falls Bank in the building which is next to the Shelburne Falls Hotel. You will notice there is a driveway that runs down from a street back of the hotel in front of Frost's stable, and also another driveway extending out onto Water Street. You will take particular notice of a blacksmith's shop that will be pointed out to you; and as you look at the blacksmith's shop, please bear in mind to remember the distance from the blacksmith's shop along up these streets each way, whether you go up Clement Street or Green Street; and when you come to the O'Neil home on this side of Green Street, as indicated on the map, please bear in mind those distances as best you can. Then when you come to the O'Neil home, there will be pointed out to you the location of the rooms in that home, which will bear an important part in the evidence that will be presented to you.

Then you will also notice, as my brother Hammond has explained, this ledge of rocks [showing], taking particular notice of the ledge of rocks; and also the time of year, remembering the time of year when you notice the ledge of rocks. Then, as you pass along up this road, you will notice on your right, as you go up the Crittenden road, the home of the Dewsnaps, as indicated here on the map. You will notice that Union Street extends to the northward, and passes to the rear of the O'Brien homestead, of the Wall house and of the Schontag house. That is not indicated here on the map. On the west of the Schontag house is a barn. You will also notice that on the left side of the road, on the corner of Crittenden road and Union Street, is a house indicated here [showing] as the Lewis Meyers house. Then you will take particular notice of the steep pitches that you have to climb, and the continual rise in the road until you come to the place where it is indicated on the map that the body of the deceased was found. Then you will pass along from that point, bearing in mind the place that has been designated to you where the body was found, until you come to the home of the Crittenden's; and then, standing there, you will notice the distance between the home of Mr. Crittenden and the home of Mrs. McCloud. You will also bear in mind the distance from Mrs. McCloud's house, or from Crittenden's house, to the spot where the body was found. You will

also, in passing back from this road, notice that Union Street extends from the Crittenden road to School Street, and turning, you will notice a little above the corner of Union and School streets is the Morrissey homestead. You will take particular notice of that house, You will pass around that house, and notice that on the side towards the Crittenden road are windows and doors. You will notice those, as they will be an important part of the evidence. You will notice that directly beyond the house are the woods that my brother Hammond has indicated, the heavy woods that skirt this side of the road a few rods above the house; and you will also notice the distance, as you travel up the road, from the Shelburne side of the bridge to the place where the body was found, noticing the declivitous hill. You will also notice, going back down into the village of Shelburne, a building directly east of the Shelburne Falls House, where Baker's drug store is. You will notice in Baker's drug store how the lamps are located, and how the lamps that hang over the sidewalks before the drug store are located. You will notice, as you pass along up by Baker's drug store, as will be pointed out to you, here, just about at Mechanic Street, the location of what is called the old silk mill; and as you come down Bridge Street again and pass back over here, just take a glance across the valley, across the river, noticing the location where the dam is, noticing the rush of the waters, and fixing in your minds the swiftest part of the current, as best you can, while you stand on the bridge.

With these few things which I have called to your attention, my associate who will accompany you will point out to you the different points we desire to bring out in evidence, and later will explain the other matters in the case.

MASON, C. J. Let the officers be sworn for the view.

The officers were sworn for the view.

MASON, C. J. I desire to say to the jury, with reference to the view, you will observe the oath that was administered to the officers. The purpose of the view is not to take testimony, but to observe the physical objects that are called to your attention. It is important that you keep together, and see together all that is exhibited to you. You are not to separate and make independent observations, but you are to see as a body the things that shall be pointed out to you by counsel on one side and the other. The counsel will not be permitted to make statements to you, and for that reason you will be cautious about asking any questions, but simply observe what your attention is called to, taking careful note of what you see.

After the view is completed, you will return to the place provided

for your quarters and remain there until the coming in of the court to-morrow.

Perhaps this is an appropriate time for me to caution the jury that, as they are to be kept together for a considerable time, and under conditions which are perhaps unusual to them, they should be extremely careful and cautious with reference to their health, in order that there may be no inconvenience to themselves or any interruption of the public business; and I also desire to caution you with reference to any talk in your presence about the case while it is before you. You will be constantly attended by officers, and it will be their duty to see that no person talks about the case in your presence or says anything to you with reference to it. It will be also your province to observe that you do not yourselves talk about the case in the presence of the officers, or in the presence of any persons who may attend you during your separation; and it is not well that you should talk about the case among yourselves until it is finally given you in charge; and in no event should you suffer your minds to rest in any conclusion with reference to any branch of the case until it is all before you. Obviously, at different stages of the trial different aspects may be presented to you and different impressions may be made; and it would be very undesirable if you should allow your own minds to get set with reference to anything which had been presented, as in a later stage of the case it may be essentially modified or controlled, and you should keep your minds open for impressions up to the final moment of dealing with the case yourselves.

You are to be separated, in accordance with the usage, in order that you may receive no impression with reference to the case from any other source than the sworn testimony, and the view which is to be taken at the outset, in order that you may the better understand the whole testimony, and it is important, of course, that the jury co-operate in this. So far as the papers are allowed to go to you, they will be carefully examined, that nothing that may relate to this case shall be received by you in any other way than in the different ways which the court has ruled.

I think that is all I need to say to you at the present time. After the completion of the view, you will be returned to your quarters and come into court at 9 o'clock to-morrow morning.

The court will take a recess, remaining open.

Recess till 9 A.M., July 20.

SECOND DAY.

JULY 20, 1897.

The court came in at 9 o'clock, and the roll of the jury was duly called.

Opening statement for the Commonwealth :—

Mr. HAMMOND. May it please the court and gentlemen of the jury : It now becomes my duty to make such suggestions to you in opening this case as may guide you to a clear understanding of the evidence as it goes in. It is hardly necessary to say upon this important and solemn occasion that it is well to remember that now, and in a house set apart to the consideration of the questions that arise in the administration of justice, we have to deal with questions that are vital to society, vital to the preservation of human life, vital to the protection of the interests of those who are accused, and equally vital to the interests of the community in which we live. You are men of the body of the county of Franklin, and to you is entrusted the duty of determining a question of fact. It may be in the last analysis a very simple question of fact. In the words pronounced by the clerk of the court, as cases are entrusted to juries, if the defendant is guilty, you will say so ; if not guilty, you will say so, and no more. Divesting yourselves of everything except attention to the matter in issue, the interests of the public and the interests of the prisoner alike are with you. To you alone is entrusted this duty, and to you this question of fact presented. Such a charge as is here made is seldom made in our courts. It may never again be your solemn duty to sit in a place of this kind. You simply attend to the duty here and now. You will exercise the same kind of judgment which you use in the ordinary affairs of life. These questions that come to you will lead to such a conclusion as you may find in your verdict.

The evidence that we shall present to you in this case is such evidence as must necessarily be presented in the trial of a case of this kind, from the fact that the alleged crime was a matter of secrecy and of darkness. No eye witnessed it except the eye of the guilty person, whoever that person may be found to be, and so we come to a class of evidence to be presented to you which has been called circumstantial evidence. Circumstantial evidence is the kind of evidence on which we act in all the ordinary affairs of life. It is

that evidence which arises from the surrounding facts, and, from their relation to the principal facts, to the main fact to be proved. It is such evidence as leads the mind to a conclusion, and to such a conclusion as establishes the main fact. Acting upon this evidence in all the affairs of life, we, for instance, look out upon the roads and fields after a night of uninterrupted sleep, and from the signs on the earth, the buildings, the trees, we say it has rained during the night. We establish that fact in our minds from the circumstantial evidence. Again, we see the broken limbs of trees, and the leaves thrown around, and we infer from these circumstances that the rain was accompanied by the blowing of a strong wind. The mind is as well convinced in each case as if we were eye witnesses of the fact.

There is no evidence admissible in a court of justice that does not depend more or less upon circumstances for its credit. States of mind are always inferred from circumstances, the acts and the words of persons. There is no difference in the force and the cogency of different kinds of evidence. We constantly make use of this sort of evidence in our daily affairs.

We learn by experience that when certain facts are proved to our minds, certain other facts may be inferred, and often times inferred with as much certainty as though the direct evidence of them existed; the distinction being that when you act on circumstantial evidence it is requisite that you should especially avail yourselves of your large experience which arises out of the ordinary affairs of life. There should be the exercise of a sound discretion, the ordinary intelligence, the knowledge of common affairs, the exercise of care and caution, taking care carefully to discern what the circumstances taken together prove.

Circumstantial evidence is not only legal evidence, it is also the sort of evidence constantly used; it is often sought and often the only evidence that can be used in the trial of important criminal cases. Generally it is of the most convincing character. Crime is secret. It shuns the light of day and courts the darkness of night. The murderer never calls in a witness to the fatal blow. He seeks as far as possible to obliterate every trace of crime; and, unless circumstantial evidence may be used in the trial of a criminal case, and unless a jury is warranted in finding a verdict of guilty upon it, very many times it would be useless to attempt the prosecution of a criminal case.

This evidence as a whole is well illustrated by comparing it to a cable made up of a series of strands; the cable consisting of a large number of circumstances, not each of great importance, but each assisting to prove in connection with the others the main fact, and

all combined together proving beyond a reasonable doubt the main fact. Not every circumstance which is to be alluded to in the government's case need be proved beyond a reasonable doubt; not every minor fact may be material. Every strand in a rope is intended to give some strength to the whole rope; but if some fibre did not have that strength, yet the rope as a whole is sure and strong. As the circumstances are shown to you by these successive witnesses, your minds will be led to a conclusion, clear and undoubted, and in which your minds may rest.

Coming now to the consideration of the particular facts in this case, we have to consider the fact that on Friday, the eighth day of January, 1897, Mrs. Hattie Evelyn McCloud died. The circumstances of her death will show you that she died at the hands of a man who so grasped her throat that the vital breath of life was cut off, that the rings of the trachea were broken, that she died at the hands of that assailant, and that at the same time, and either just before or just after the passing away of the spark of life, her body was ravished.

Mrs. Hattie E. McCloud, when on her way home from that village of Shelburne Falls, at somewhere within an hour after quarter-past 6, passing out from the village, and going up the accustomed way towards her home, disappears from the knowledge of the world. Her body is found lying at a spot which has been indicated to you and is indicated on the map as the place where the body was found, and there it lay on the following morning, frozen by the cold of a January winter's night; but the frosts of winter retained indelibly there the marks which showed what had occurred, and what had happened. She was on her way, as I have said, from the village towards her home in the cottage just beyond her father's house. She was the victim of some one's lust, of some one's robbery, and died by that one's hand. The facts that will appear before you will show that at that very instant the purpose of the assailant to gratify his lust was accomplished; and that her death, very likely not premeditated, was the inevitable result of the violent hand that was laid upon her.

You will have brought to your attention that she was a young woman in the prime of life and health, thirty-five or thirty-six years of age. She had been a widow for six years, living there in that cottage near her father's house, in close and intimate association with her father, George D. Crittenden, and his large family of daughters; living there with her daughter Alberta, then nine years of age, now ten years old.

She went down to exchange a book which she had previously bought, and which she intended to give to Frank Turton, a boy to whom she was giving music lessons,—a boy about the age of her

own daughter. She had bought and brought home to him a book of considerable size, ten or twelve inches in length, perhaps, an illustrated book for a child; and, finding that the boy had the same book, she had occasion to go down to the village on this Friday night to make the exchange.

Leaving a little after 5 o'clock, leaving without eating her own supper, preparing a supper for her daughter, and leaving word that she would soon be back, having an appointment to be back at 7 to give the boy, Frank Turton, his music lesson, she goes down to the village, doing her errands, which I will not stop to mention now. She is ready to return, to go back to her daughter, to go back to this boy. She started to go back to the daughter, but the daughter never heard her voice, the music lesson was never given; she got no farther than this point in the woods, and there her life went out.

The people at the home upon the hill, knowing that she knew how carefully Alberta was cared for by the grandparents, and the families being in many respects as one, thinking that for some possible reason she might have stayed down in the village with a married sister, Mrs. Ball, were not specially alarmed on that night, and no search was made until morning. Though the children may step out to the door to see if mamma or the music teacher is returning, no returning presence welcomes them, no mother comes back, no music teacher comes back. Though she had planned to go herself to the College of Music and take her lesson on that Saturday, her body lay in the woods. The evidence of Saturday morning discloses to Mr. Crittenden, to his faithful friend Mr. Peters, a man who had acted for him in the capacity of assistant and day laborer, the position of the body. The mother and her daughter had gone to the village in a carriage, passing by the fatal spot and not making the discovery. The father and Mr. Peters, as they go down the hill, discern the prostrate form in the woods. They go over to the place where the body lies, and Mr. Peters, placing his hand upon the face, determines instantly the fact of her death. The father determines the same fact. The father instantly sends for the family physician, who is also the medical examiner; and Mr. Peters starts off, and, although a man somewhat in years, not a man accustomed to run a race, goes on at a rapid gait, giving the announcement as he goes that the body is lying dead in the woods.

Dr. Canedy is summoned, and he arrives at the scene, and begins to make careful note of what has happened. When he arrived there other people had come upon the scene. The details of the surrounding facts are noted. She lay in a sloping position upon the

hill-side, her head a little inclined, her feet toward the south, the clothes under the back of her person slid up about to the knees, and gathered about the hips. Her hair was drawn up beyond her body, as if, in connection with some act, her body had slipped down the hill a little.

Bundles that she had carried, of which I will speak a little later, were placed around upon the ground. There was the large book, there was a black cloth bag, which you will see (a shopping bag), a bundle of cookies, a bundle of Graham wafers and two oranges in the bag. Her hat lay there near by. Her hands were covered with her gloves. Her hands were flexed, and stiff and frozen in that flexed position, the gloves upon her hands.

Dr. Canedy made the examination of the body, which had upon it a winter cloak which will be more completely described hereafter. Removing the cloak that concealed her neck at the time, he observed the marks upon the neck, which were then not so particularly examined as afterwards. But they were there. He observed at the same time that the mucus and froth which had come from the mouth remained there, frozen upon the face. He observed, as I said, the situation of her dress, that the skirts had been placed down upon the front of her person. He raises the skirts and makes an examination. He finds that the leafy mould of the forest and the frozen leaves are upon her person in front, upon her garments; the knitted woollen drawers had leaves upon them. The garments about the waist had leaves upon them. There was a bit of leaf or two about the genitals of the woman. He observes that the blood is oozing away a little, and that it has soiled the garments. He observes at once that there is an appearance of the body which shows it has been violated. Two or three others of the people who were there observed the facts, not so closely as Dr. Canedy. It was immediately requested that all the people there go away from the place. A guard is set so that the people shall be kept from the road and out of the field. The doctor provides a blanket which he had in his carriage as a means of carrying the prostrate form away. Before it was carried away Mr. Crittenden had gone back to the house and notified the family, and one of the daughters came down. Mr. Crittenden in going away took with him the bag and one or two of the bundles, and they were carried to the house. This woman wore a hat of a pattern easily determined, which will be shown to you. She wore a cloak suitable for winter, which will be shown to you. She had a veil, which will be shown to you; and the location of the different articles of her dress will be suggested briefly. And then you will notice that she was carried by the hands of four of her neighbors to the home of her

father, and there an autopsy was had. Doctor Zabriskie of Greenfield, State police officer Benson Munyan, and other witnesses summoned were in attendance. The autopsy consisted in an examination of the vital organs. The condition of the heart and lungs was such as to show conclusively the woman had died of strangulation. The condition also of the body showed that there had been the access of a man. The condition of the womb as it was examined showed that she was not at the time of her monthly period; that the blood which oozed away was not menstrual blood, but blood from the violence which had been used upon her person. We show you, then, that some one, either in the commission of the crime of rape, or in the attempt to commit the crime, committed also the crime of murder. Our statutes provide that murder committed with deliberate premeditated malice aforethought, or committed with extreme atrocity, is murder in the first degree. Murder committed in the attempt to commit rape, or in the commission of rape, is murder in the first degree.

Now, who was this deceased woman, Mrs. Hattie E. McCloud? I have mentioned that she was living there near her father; that she was a woman thirty-five or thirty-six years of age, of medium size and build, of medium development and weight; that she had been a widow for six years, living there with her nine-year-old daughter; educated according to her good station in life; cultivated, accustomed to give music lessons, graceful and accomplished, in the ordinary health of her age and her physical condition. She was known to all the people of that village. She had grown up there, and all but a few years of her life had been spent there. She was accustomed to go back and forth to the village on foot, knowing no fear in the quiet security of that New England village, walking the accustomed road, which was down the Crittenden road, then over into Clement Street, down into the village by a way now familiar to you. The dignity of her position was known to every one. She was doing this day by day, trusting to the safeguard of that dignity.

It becomes necessary to ask what were her movements on part of the day Thursday, because it has a significant connection with the amount of money, with the exact money, with the exact bills, and with the exact coin which this defendant had the first moment he appeared again in the village after this awful death. Mrs. McCloud went to the village Thursday afternoon. I have said that she again went to the village on Friday afternoon. She had a little money which her father had borrowed from her, and was giving to her from time to time as she wished. She had some business, some bills to pay, for which she received two checks from her father, divided into two checks for her convenience, and she received these checks

on Thursday,—one check of \$40 and the other check of \$39.60. She goes down to the village on Thursday afternoon, and the check of \$39.60 is cashed at Amsden's dry goods store, which is on Bridge Street, on the Shelburne side, and in a location which is familiar to you (at any rate, it is marked upon the map, so you can see it at any time). Going into Amsden's dry goods store, she was seen by several persons there; there was Mr. Amsden, and he happened to come in from the depot with a gentleman who was to give a public reading on that evening, Mr. J. Addison Tuck of Gloucester. He came in as the lady stood at the door, and was introduced as the gentleman who was to give the evening reading. Mr. Tuck happened to see the bills she had, and recalls especially the fact that she had a ten-dollar bill in the money given her at the time. Mr. Halligan, in a neighboring store, knows about the giving of the change, as Mr. Amsden had to go into the next store to get the check cashed. The clerk in the store is also familiar with it. It may be convenient now to give you the facts, showing that out of this \$39.60, when she started to go home Friday night, at about 6 o'clock, or a little after, she had left only \$15.67; and in that money as she took it was a ten-dollar bill, five-dollar bill and some silver. Now, note the bills which she paid, evidently getting the money from her father, and it will appear that she had substantially no money on hand when she took her father's check; and she wanted that check to pay the little bills that had been run, down in the village. At Amsden's store, where she got the check cashed for \$39.60, she made payment of a bill for dry goods she had run of \$16.53, so that she took away from the store \$23.07. She had it in her pocketbook, and her pocketbook was kept in her shopping bag; and I may say in her own home she had a particular place to keep the shopping bag, and in it to keep the wallet. She went into Jenks's shoe store, and paid the clerk \$1.50 she owed at the store. She went into the milliner's shop,—Mrs. A. T. Brown,—and paid a bill of \$4.18. She went, either that day or the next,—I think on Friday,—into Smith's bakery, and paid 10 cents there for something bought before, and 10 cents for something bought that day, making 20 cents she paid there. At Amstein's grocery store at the opposite end of the bridge, on Buckland side, she bought some ginger cookies for her daughter, paying 10 cents. On Friday she went back into the store and changed those for some other similar article which her daughter Alberta liked better, for Graham wafers, and at the same time bought two oranges, for which she gave 6 cents. She also paid for her washing of that week, \$1.20.

When found, there were left in the wallet a five-cent piece and 3 pennies; there were left pennies scattered about in the bag to

the amount of 8 cents; so that her money which disappeared from her possession at the time she was killed we find to have been \$15.67, and she had no other money.

Now, as bearing upon her position and situation with reference to her shopping expedition on this day, it may be convenient to mention to you what she had to carry with her, — her bag, a black bag, which will be shown you, of convenient form for shopping; her Graham wafers in a little paper bag; two oranges in a paper bag; she had also the other packages which she had exchanged, and the large package of a book, and these, some of them, were placed in the shopping bag; a dozen sugar cookies she bought at Smith's bakery was one of the packages. She was through with her work in the village. She was seen on State Street, in the State road, and in that vicinity, about 6 o'clock or a little after. She was seen by one and another as she passed up Clement Street. She never was seen again alive, except by the eye of the ravisher, whose hand was responsible for her death.

At this point we will turn to the case of the prisoner at the bar, and consider the state of mind, condition of life, and the circumstances of this man as they existed antedating the time when this woman died.

On Thursday, the day before her death, this defendant contemplated this deed of violence. At Ward's corner on Thursday, late in the afternoon, at about the time that men would come out from the factory, John O'Neil was sitting as Mrs. McCloud went by. To a young man who had just come out from the factory, who was on his way home, and stopped to chat for a moment, speaking of this woman whose station in life was infinitely remote from his own, and to whom he had no right of paying addresses, or into whose presence he had no right to come, O'Neil said, "I am going up with her some night." The remark, the circumstances, the situation of the man, predicted the lustful violence which occurred twenty-four hours later. On the morning of that day he was present in the village. He was talking with an acquaintance, a friend of his, on the opposite side of the street, and not far from Ward's corner, and the talk was of lust and the desire for lust; and the declaration was made by John O'Neil that he must have the gratification of his lust, using the vulgar slang that he must have "a piece." This was John O'Neil on Thursday, the day before Mrs. McCloud died.

Who is the defendant, John O'Neil? He is a man about twenty-five years of age, living in the family of his father and mother without compensating them at all for his board, out of work, of dissipated habits, unmarried, drinking heavily whenever his own or companions'

money was available. He had not worked for many weeks. He had no money. The last known money which passed through his hands came from one Jack Connors, who loaned him a dollar about the first of January, to enable John O'Neil to go to Westfield. For some reason John O'Neil did not use that money for the Westfield trip, but spent it in the pool room and in drink; and when it was gone he declared he had spent his last cent and felt better, and declared that he had no money left. For the days previous to Friday, January 8, and down to supper time on that day, you will find that all his associates knew that he had no money; that Morrissey, and Haller, and Kennedy, and Woodward, and Halligan, and Glassett, and others who will be called, knew that he had no money. Not only did they know it by observation, they knew it also by his declarations; he telling the boys in detail that when he had money he "blew it in," that he could not return their treat, that he could not pay the drinks, that his money was gone, reiterating it in different ways, the exact words of which are not now given you, but which you will note as they come in. So that John O'Neil was in a state of absolute destitution as to money on that Friday, down to the hour of supper time. He had been with his friends, and he is at Ward's corner at about the ordinary hour of going to supper. From that time, except the short time requisite for supper, he disappears from the knowledge of men, from the sight of people. From about a quarter-past 6 until about a quarter of 8 he was absolutely away from his accustomed haunts, except a short time for his supper, — away an hour and a half.

We have, then, these antecedent facts, the situation of the village, as the map discloses it, the character and the manner of life of the man who was guilty, who used the identical money which I have mentioned, which will connect itself with the subsequent facts that the money was produced by John O'Neil between 8 and 9 o'clock in the evening. We have the fact that John O'Neil was idle, drinking, licentious, and at the time in question had declared his intent to gratify his lust upon the unfortunate woman who is now dead.

Going a little more into detail about John O'Neil, on Friday he spent much of his time in Haller's pool room, of which mention has been made to you; he was there at different times in the afternoon, going out to the different hotels, and accepting the hospitality of the men who had a few pennies, having none himself. He spent the afternoon drinking, to a certain extent, so that he was at 6 o'clock somewhat under the influence of liquor, and during that time he was with James Woods, Timothy Kennedy and others. L. P. Woodward, the clerk in the Woodward House, saw him, Leland and Glassett and others whom I might mention saw him on that day, saw his course of conduct, especially with reference to the fact that, although he was

drinking when others could treat, although he was in the pool room where money was requisite for a game, he had no money, and not only that, but he declared he had no money.

I have noted to turn again to the movements of Mrs. McCloud on these days, but perhaps that has been sufficiently fully gone into. Coming down to the Friday, on Friday Mrs. Thomas Andrews, when going to take the train to Northampton, saw her moving down to the village. She was seen at Amsden's dry goods store, where she went in to change the book. Carrie Winterhalder saw her in there. Other people saw her down in the town. Earl Duncan saw her, and others saw her at 6 o'clock; and a little after, others, whom it is not necessary to mention, saw her down town on Clement Street, and she disappeared from view. There may some question arise as to the time. We shall submit to you by the evidence in the case that she died somewhere in the vicinity of 7 o'clock or a quarter-past 7. We do not undertake to fix the time with mathematical certainty, and it is not necessary to refer to the fact that ordinary events, as they occur from day to day, cannot be fixed by you in exact time. Take any of the events of yesterday, and can you, if you did not look at your watch and make an exact note and write it down, can you say from definite recollection the exact time at which any event transpired? And if you think your impressions are probably accurate, you compare your notes with those about you and your associates, and they vary. The ordinary fact known to us all in our business and in our ordinary affairs of life is that we cannot fix time; and witnesses when they give you their impressions of time give you their impressions honestly; but events transpire in succession, and if those who note events in their succession are not exact, it is not that there was not the sequence of events, but that people are never accurate in their estimate of time.

She disappeared and went up Clement Street, and the indubitable fact is that she died in the woods. John O'Neil disappeared and went up in that direction. He reappeared at a quarter of 8, and he had the evidence upon him that he had brought her property away.

She started up the lonely but heretofore safe road, expecting of course to meet the daughter and the boy; but to the Turton boy came no music teacher to give the lesson, to the girl of nine years of age came no mother's welcome word; and if they looked out anxiously waiting for mamma, they little knew the fact that her body was lying down in the woods in the cold embrace of death. The music teacher never came back, the mother never came back.

On Friday evening O'Neil is first again seen in his accustomed place down in the village, where he spent most of his daytime and evening hours, at a few minutes before 8 o'clock, — about a quarter

of 8. Julius Pfersick sees him going down depot hill, toward the village. You will recollect readily where the depot hill is, and you went out onto the crossing and looked down the hill. Down that hill Julius Pfersick sees him walking toward the village, and some remark is passed, he calling Julius by a familiar short name, "Hex,"—"Hello, Hex,"—so that they recognized one another.

O'Neil passes down upon the bridge, and he is there standing upon the bridge on the down-stream side, alone, with his arms resting on the railing, in a meditative, contemplative attitude, looking down into the cold water which had not frozen over again since a recent break-up; and Selectman Kendrick comes along, passing over towards Bridge Street, and, seeing John there alone, he says, "Hello, Jack." Some incidental conversation takes place, and Mr. Kendrick passes over with him, and John passes over the bridge.

Evidently John returns over the bridge pretty soon, and he gets back in a short time up to the house of the Woodward, the hotel known as the Woodward House. He appears in there not far from 8 o'clock. In the Woodward House is Mr. Leon Woodward there at the bar, and two others of his acquaintances, James Wood and one other, who were standing engaged in some little game, and did not pay particular attention to O'Neil as he came in. O'Neil came in and went up to Mr. Woodward and called for a pint, and laid down a half-dollar in silver to pay for it,—the first time he had been possessed of any money within any of the days that come under our discussion or consideration. He lays down a half a dollar and takes the pint, he pays for it and puts it in his pocket, and as he goes out the door, Mr. James Wood accompanies him. As they go over, James Wood leaves him upon the bridge, saying that he has an appointment to meet a young lady, a Miss Tousseul, who was one of the employees in the Shelburne Falls House, a waiter in the dining room, and with whom he went to the Shelburne Falls House, and with this lady he spent the evening, visiting with her in the dining room.

He goes over and leaves James Wood near the east side of the bridge. Now, James Wood goes on, and he goes on his way and into Haller's pool room; and as he comes to the door of Haller's pool room, meeting one of the Hallers and one other, he invites them to take a drink, and, discerning that the possession of property of that amount was somewhat unusual, he gives this excuse. He says, "This is Jim Wood's pint, but he isn't here; let's drink it." And so this pint which he had bought with the half-dollar, but which he told those people belonged to James Wood, they began to drink.

Coming in, he makes some talk, asking somebody in the pool room to come out and go to ride with somebody who was expecting to go

off up to Buckland. Some talk is made. But without undertaking to go into all the detail of what occurred in the pool room, he stayed about, in and out of the pool room, for a long time, making an exhibition of his money, making a reckless spending of it as of easily gotten, strangely gotten gain; and he begins by telling the Haller boy, "I will pay you what I owe you, here is a dollar," and pulling out his money, evidently thinking that it was a dollar. And after a little talk, and, "You don't owe me but 75 cents;" "Oh, yes, I do; never mind, here's a dollar," — upon examination they say, "Why, no; that isn't a dollar, that is \$10." Well, then, the surprise at that being passed by, he tried again looking for the dollar, and he brings out \$5, so that he has no dollar to give him. And after a little time spent in that way it is suggested that Morrissey take the \$5 and go and get a pint over to the Shelburne Falls House, and get it changed. And Morrissey goes there and brings back the change. Later in the evening Haller is paid his dollar, and at different times pints are sent for, with a suggestion to the men who go, "If you need anything, take it out," with a freedom, with a prodigality, with a pouring out like water, which is the attendant incident of gain gotten in that way.

They pass considerable time in Haller's pool room, and some question arises as to where he got his money, and he makes the significant expression, "I have struck it rich, I have got the tin;" and different expressions, showing that he had suddenly become possessed of that money.

They go out upon the street, and Woodward and Morrissey and O'Neil are upon the steps of the Shelburne Falls bank near 11 o'clock at night; and they are having some discussion concerning a certain wound upon his head, of which I will make mention later. And when James Wood comes along, coming out of the hotel where he left the lady, they show James Wood a ten-dollar bill. Wood says, "Where in hell did you get that?" and they replied that it belongs to one of the others at that time. That was a false reply, made by O'Neil. And then they begged James Wood to go and get a pint; but it is the closing up time, and, whether that was the reason or not, James Wood did not get the pint. The night policeman, whose name was also Woodward, coming along suggested to them to move on. They go, two and two, gradually over to the depot.

At the depot they go in, having two ostensible reasons, to get warm, or to buy a ticket. They make some inquiries of the ticket agent about Jack wanting to go to Boston and wanting to go to Baldwinville and different places, and they stay about there a few minutes until directed to go out; and during that time they take Jack O'Neil's ten-dollar bill and show it, — show the agent that Jack has got the wherewithal to buy a ticket, if he wants it.

They go out and down to the engine house, to James Wood, who was a man in railroad employ. James Wood had left them at the depot and gone on down to the engine house. James Wood saw them coming down there, and immediately on their coming he went off and went home, his father's home being in that locality. The other three stayed about there until after midnight, and John O'Neil got home to his father's house at 1 or 2 o'clock in the morning, and during this evening the accounts that he had given concerning the origin of the money were impossible, preposterous and false.

I will mention one of them. He told the boys that he got it by a mistake in change over at Woodward's Hotel, — Phil Woodward's; that he gave Woodward a two-dollar bill for the pint, and he got back a ten-dollar bill instead of a one for change. That was not true. He gave Woodward a half-dollar in silver for the pint, and did not give him any two-dollar bill.

Coming now to Saturday morning, we have this man going home at 1 or 2 o'clock in the morning; and, treating the money on Saturday by itself, he is down at his accustomed haunts at 9 o'clock, or from that to 10, on Saturday; he is about with these different men with whom he is associated in his drinking, and from time to time money is spent. In the afternoon Mr. W. P. Morrissey gets the ten-dollar bill changed; the five-dollar bill was changed the night before. And, carrying himself to different locations, they wait about until between 5 and 6, when he is prostrated in the alleyway by the side of the pool room and is carried home in a nearly or quite unconscious condition. He sends in the evening for the priest and for the physician. He remains at home on Sunday and Monday, and on Tuesday is arrested.

A little more concerning Saturday, not trying to give the order of the details. When the knowledge of this disaster to Mrs. McCloud, the fact that she was dead, came first to the village, and as groups and knots of people discussed it at different places, John O'Neil puts himself into every crowd, on the outside of it whether they are on this corner or that, is anxiously listening to the remarks, and makes the most incoherent, inconsistent, impossible and false remarks concerning Mrs. McCloud and concerning the death.

Starting from his home, as he told Mr. Munyan, because his mother had told him Mrs. McCloud was dead up in the woods, instead of going up the Crittenden road to see about it, he goes immediately down to the village, and doesn't say a word about it until it becomes a common rumor; while just as he leaves his house, where people are talking about it, he did say to Matthew Boyle something about it. He is down town, he is in the blacksmith shop, he is about the street corners, he is in different places about. He discusses it a

little in the blacksmith shop. They get some more money changed, and get their pints, and they drink through the day.

At one point it is mentioned, and he listens as an observer who has not heard of it. At another point where they speak of it, he says: "Who is Mrs. McCloud? I never heard of her; I don't know of such a person." And after a considerable time explaining, "Oh," he says, "I think there is such a woman, my mother does washing for her; I don't know her." At another time he tells the bystanders that she was a damned handsome woman, he knew her well. At another time he tells the bystanders that they all say she died a natural death; that Mr. Crittenden said she had fainting turns, and probably in some fainting turn she fell down and died. And right in the same breath in which he says that she died a natural death, he adds, "I would like to help hang the man who did it." Two gentlemen of responsible positions in the factory, passing to and from their dinner, heard that, and said to him, "Who is there to hang, if she died a natural death?" And he turns away.

Going on from that, with strange remarks at every corner; "What do people say about it?" "How did her clothes lie?" "Were her clothes pushed up?" He finally goes, about noon, into the Raguse's store, which is on the side of the street leading north, just beyond the bridge, you remember; and he gives to the Raguse brothers a most dramatic and exact illustration of what must have happened, telling them that she was choked to death by a hand on her throat, "And I will show you how they did it;" and with his left hand on one of those men, with a pressure that was quite considerable, and, "That's the way the fellow did it," he gave the illustration with the vividness of an eye-witness. He goes on from there to his home to dinner, and back again into the village, and is about until he is prostrated at 6 o'clock.

There is another story that John O'Neil put out at that time, which may be called his story of the hoboes' connection with it, as he called it. At some time, I think it was soon after dinner, two tramps came up, passed over the bridge, passed on up the Buckland side, and as he saw them he told the boys that were there, "Those are the hoboes;" or, "One of them is the hobo that was on the steps of my mother's house when I went home last night;" and he told one of the men that "That is the fellow that did it, and he beat me out of my ten-dollar bill, too." And he went over and got into a little altercation right there, in a demonstrative way, before the crowd,—got into a little altercation with this man. And in several different places he told of the tramp, the hobo, as the man who had to do with this affair. And in that same connection I may mention that he had a little wound upon his head, concerning the origin

of which he gave very different accounts. The last account that he gave was that this hobo kicked him the night before on his mother's steps, and there was the mark. He showed that mark to different people in the pool room, he showed that mark to the men as they stood on the steps of the hotel, he showed that mark to some men who were back of Frost's barn; he told the boys that the hobo gave him that mark by a kick. The night before he went out from the pool room, and he did fall down, as he was sick with his liquor; and he told some of the boys that he fell against the coal box, which is inside the shed, as you may remember; others he told he fell against the corner of the building, which is across the driveway, as you remember; and to others he told that the hobo did it. As to this wound, some of those who saw it may say they thought it was fresh; others, who observed more carefully, observed that it was scabbed over.

The frequency with which he referred to that wound upon the head as something to be explained and talked about, the way he alluded to the hobo in connection with the money, the false account which he gave of the money, the talking about it in different ways, in all these different positions, show his state of mind in connection with it. His rash spending of the money, — in the twenty-four hours he spent \$10.50; when he was carried home he had only \$5 left. In every position in which he is seen, he gives a false and unnatural account of himself, a false and unnatural account of his money, an attempt to deny the ownership of the first pint; and, growing rash as he got in liquor, he brags about his money, that he "had struck it rich."

Then the identity of the money is significant. She had \$10, she had \$5, she had a little over half a dollar in change, and no more. She kept it in her purse and in her shopping bag. She was seen to have this money Thursday night. She was at her home on Friday, without opportunity of spending any money of any amount. She had her bag with her on Friday night. Her purse was in a proper place in that bag, you will say, and in it you will be satisfied was the \$10, the \$5, the half-dollar in silver. She goes to her death. The hour and a quarter during which time she was in that vicinity passes, and John O'Neil has disappeared from his accustomed chums. He comes back into their haunts, and he brings back the \$10, he brings back the \$5, he brings back the half-dollar. I have mentioned sufficiently concerning the false account, and in connection with that his spending money so rashly. He was willing to pour it out like water. He met a man, who is sometimes in his cups, by the name of Nutting, during the day Saturday. He was dropping money carelessly. He says, "Nutting, I will give you two dollars to tell me where I can get —." I will not now mention the vulgar word, — get the gratification

of his lust. The hobo story was heard by a number of boys, William Morrissey, Michael Hurley, Dennis O'Brien, Jr., and Thomas O'Connell, who will give you, in the plain way of boys, their statement of it.

And now, gentlemen, we will, one by one, call the witnesses before you, with as little delay as may be necessary. We will all with patience attend to our duty in this matter. Whatever the evidence shall prove, you will say by your verdict. And so there will be no occasion, as there never is occasion, when correct results are reached, for lamentation. We are, at this unfavorable season, at our posts of duty, that the work of the court may go on without delay; and that there may be no lamentation that "because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil." Whatever the result, it may be determined speedily and now, to the end that the course of justice may be taken and this matter determined.

Mr. KNOWLTON. May it please your Honors, my learned friend has conferred with me about the exclusion of witnesses, and I have told him that, as far as the Commonwealth is concerned, we regard it as a proper thing to do in a trial of this kind; and, without the necessity of a formal motion on his part, we assent that that may be done. I do not know that I ever was engaged in a capital cause where it was not done. There are of course one or two exceptions. It is not customary for the medical witnesses to be excluded.

Counsel for the defendant assented to that exception.

MASON, C. J. The order for the exclusion of witnesses may be given. It will be necessary that the sheriff shall have some knowledge of the witness, of whom are excluded, and also of the exceptions. All the witnesses summoned on both sides may be excluded from the court room except the medical experts and such others as may be agreed upon by counsel. Any other exceptions must be brought distinctly to the attention of the court.

Mr. KNOWLTON. The only exceptions are the medical witnesses, and possibly the stenographer who took some of the testimony at the preliminary hearing. He may be called to contradict, if necessary. And the surveyor, — well, he is here. May I make the announcement?

MASON, C. J. You may.

Mr. KNOWLTON. All witnesses who are summoned may now leave the court room, except the medical witnesses, whether they are called on behalf of the Commonwealth, or defence, or both.

EVIDENCE FOR THE COMMONWEALTH.

DANIEL W. HYDE — *sworn*.*Direct Examination.*

Q. (by Mr. HAMMOND). What is your name? A. Daniel W. Hyde.

Q. Residence? A. Boston.

Q. Your business? A. Civil engineer and surveyor.

Q. Whether or not you have been employed to make the map which is suspended before you? A. I have.

Q. Whether or not it was made by you and under your direction? A. Entirely.

Q. And whether or not it was made from surveys under your direction? A. It was, sir.

Q. And whether or not the map that is there suspended is a correct representation of streets, houses and distances, and monuments which there are noted? A. As far as I know.

Q. And what is the scale of your map? A. Eighty feet to an inch.

Q. I will ask you first the distance from Ward's corner to the place indicated as the place of Mrs. McCloud's death. A. From Ward's corner to a point in the Crittenden road, opposite the place where the body is said to have been found, 2,223.37 feet.

Q. By what course? A. By Clement Street, and the street that has been alluded to as Hill Street, and by the Crittenden road. I will say that the measurements were taken in the centres of the streets, and thereby corners were made in measuring off distances.

Q. Will you give us the distance from Ward's corner to the Dewsnap corner, pointing it out now? A. Ward's corner to Dewsnap corner [pointing], 1,156 feet.

Q. By which cross street? A. By Clement Street, and the street that has been called Hill Street.

Q. What is the distance from Ward's corner to Dewsnap's, by way of Clement, Prospect and Green streets, pointing it out? A. That would mean over the ledge?

Q. Yes. A. I made no measurement directly down over the ledge in the line of Green Street, but I can tell you very well, from knowing another certain measurement, so I can give it.

Q. Give the result. A. You are speaking of from the Dewsnap corner over Green, Prospect and Clement to Ward's corner?

Q. Yes. A. The distance from Ward's corner is 1,248½ feet. It is about 120 feet from the point called the O'Neil house to Dewsnap corner.

Q. What is the distance from Ward's corner to Dewsnap's, by way of Clement, Sears and Green streets? A. 1,272½ feet.

Q. The distance from the O'Neil house to the place of Mrs. McCloud's death, by road? A. To a point in the Crittenden road, opposite, by the plan, 1,186.37 feet.

Q. What is the distance in an air line? A. If you will allow me to modify that, and foot up the short distance from the Dewsnap corner in a direct line, and not in the roadway, it would make a difference of 12 or 13 feet.

Q. What is the distance in an air line from the O'Neil house to the locus? A. That I obtain by the scale on this map, and I make it 1,030 feet.

Q. The distance from Ward's corner to the O'Neil house? A. I have that by three different routes.

Q. Give the three routes, and state what they are, and the distances. A. From a point opposite the O'Neil house down Green Street, through Prospect, down Clement, to Ward's corner, is 1,128½ feet. On Green Street, through Sears, down Clement to Ward's corner, 1,152½ feet. The other route to the point opposite to the O'Neil house, down Green Street, across the track of the Fitchburg Railroad and down Depot Hill, so called, to Ward's corner, 1,227½ feet.

Q. Will you give us the distances from Ward's corner to Mrs. McCloud's house by the regular way, and by what is called the back road? A. If you will allow me to make an addition: from Ward's corner to a point opposite Mrs. McCloud's house on the Crittenden road by way of Clement Street and the street that has been called Hill Street, up the Crittenden road, is 3,067.39 feet.

Q. The other way? A. The back road up Depot Hill, or Ashfield Street, to here [indicating on map], is 3,865.73 feet.

Q. From Ward's corner to the post-office? A. From Ward's corner to the post-office, taking the centre of State Street to a point opposite the centre of the bridge, in the centre of the bridge and Bridge Street, to a point opposite the post-office building, 907.8.

Q. Whether or not the small map which you have in hand, and which the court have, is the same map, with smaller scale and a little less detail as to buildings? A. Yes, sir; there is more detail on this plan than on the smaller one.

Q. And whether or not the indications on the small map are also true and exact indications of what there appears? A. Yes, sir.

Cross-examination.

Q. (by Mr. BEER). Did you personally make the survey? A. I in January came up with a party from our office in the city and was on a portion of it —

Q. Please answer that yes or no. A. If you will kindly ask it again?

Q. Did you personally make the survey? A. I cannot say that I made the whole of the survey myself; I made part of it. In arranging to go to dinner and down to the hotel, and so forth, I was on the survey from here [indicating on map], that part through to here and down through to there; and then at a later time I was down in here, and through here and here. That was the part of the work I was on.

Q. Did you make any part of the Shelburne Falls side personally? A. Well, this, all this in through here; yes.

Q. Who made the other parts that you did not? A. It was all done under my supervision.

Q. Were you personally present when it was being done by others? A. No, sir; first when I was on the Crittenden road there was another party over here [indicating on map].

Q. Have you made any survey since January? A. I have.

Q. Of the same distances? A. No; not the same, except I measured up to the Dewsnap house to show it a little more accurately.

Q. How many assistants did you have? A. There were four of us, counting myself.

Q. Are they all here as witnesses? A. At different times I had two others.

Q. Are they all here as witnesses? A. No, sir.

Q. How many of your assistants are in court? A. None of them. They have been excluded.

Q. Do you alone represent what has been done on that map? A. I do.

Q. And you did not do all yourself. Have you made all those measurements of the distances that you have given to-day in reply to the district attorney? A. Have I made them myself?

Q. Yes. A. I have.

Q. When? A. Some of them yesterday.

Q. Which ones yesterday? A. From the Dewsnap corner, so called, down Clement Street and along through, and Bridge Street, those measurements that I have given there, to the post-office; from Ward's corner, along up Ashfield Street, — although this was measured before by people from our office, — up through here past the Kendrick house to a point there in the Crittenden road where this back road joins the Crittenden road.

Q. What measurements have you not personally made, and you were not present when they were made? A. I don't see any of them. I measured up the Crittenden road myself, as I testified a few moments ago, and I measured up to the McCloud house, so I know personally about every measurement.

Q. Is that your drawing? A. It is from our office.

Q. Well, is that your drawing? A. Do you mean, did I execute it myself with the India ink and the water color?

Q. Well, any portion of it? A. I did. I shaded a portion on these buildings here.

Q. Who made the sketch and the outlines? A. My partner attended to most of it.

Q. Who? A. My partner, Mr. Sherry, — Hyde & Sherry.

Q. Is he here? A. He is not.

Q. Have you a memorandum of the distance from Ward's corner to the first building on the south side of Bridge Street after crossing the bridge? A. From Ward's corner following along State Street?

Q. Yes; across the bridge. A. Coming across the bridge?

Q. Yes. A. By that building?

Q. Yes. A. Well, I haven't a measurement taken from Ward's corner right to that building, but I know the length of the bridge, and I know how far it is from the centre of the car track on Water Street, and also from a point on State Street opposite the bridge to Ward's corner.

Q. Please give us those different distances. A. Would you like them disconnected, in the manner I have shown?

Q. Yes; if you can't do them any better, or if you can do some addition, — give the aggregate distance. A. I can give you the distances as I have stated. The distance from Ward's corner across the bridge to the centre of the car track opposite Water Street is 595.8 feet.

Q. That is from the west side of the river? A. Yes; that is from Ward's corner right over, right through here, and right to a point opposite the centre of Water Street, or about the centre of Water Street.

Q. What is the distance from there to the post-office? A. I have given the distance from Ward's corner to the post-office. Is that what you want again? No, — yes; I can give you that distance from a point on Water Street from the electric tracks to the post-office. It is 312 feet.

Q. What is the distance from Thayer's building, the drug store there, — is it marked Thayer's? A. It is marked Joel Thayer's.

Q. Joel Thayer's building, — from there to the depot, following up the State road? A. I have no point at Thayer's, and I have made no measurement to the depot.

Q. Well, from Ward's corner you have given the aggregate? A. No; I haven't measured from the depot at all.

Q. What part of the way have you measured? A. That house I have indicated here, this is Ashfield Street, across the Fitchburg Railroad this way.

Q. From Ward's corner to the north-east corner of Green Street can you give? A. From Ward's corner to a point about there? I can give you the centre of Green Street from Ward's corner on Ashfield Street to the centre of Green.

Q. You have given? A. I can give you that.

Q. Well, please give that. A. 481.6 feet.

Q. Now find out, by scaling, the distance from the easterly side of Ashfield Street to the depot, at the crossing there. A. Between what points?

Q. From the grade crossing to the depot. A. From there?

Q. Yes. A. On the track?

Q. Starting in the centre of track and road. A. Measuring on the track?

Q. Yes, on the northerly line. A. On the northerly line of the railroad track?

Q. Yes. A. So as to be somewhere near the street there?

Q. Yes; right on that track line. A. Right there?

Q. Yes. A. By scale that is 350 feet to the nearest point of the depot, 350 feet to this end of the station, to the end of the station nearest Ashfield Street.

Q. Have you any point indicated on the map showing the southerly boundary of the Woodward lawn, — Woodward House lawn? A. I have not. The plan being made to a scale of 80 feet to the inch, there would be nothing to show details of that kind, so I haven't shown it.

JOHN PETERS — *sworn*.

Q. (by Mr. HAMMOND). Your name is John Peters? A. Yes, sir.

Q. Where do you live? A. Buckland.

Q. What is your age? A. My age is sixty-three.

Q. Whether or not at any time in the early part of January you were employed by George D. Crittenden? A. Yes, sir.

Q. While you were so employed, on Saturday morning, the day when Mrs. McCloud's body was found, did you go up there? A. I went up there in the morning, Saturday morning, between 7 and 8.

Q. About what time did you go up to Mr. Crittenden's house? A. Between 7 and 8.

Q. Where do you live in the village? A. I live down towards the cutlery.

Q. Which way is that from the depot? A. That is down the river.

Q. What time did you say you arrived at Mr. Crittenden's house? A. I went up there to Mr. Crittenden's between 7 and 8.

Q. Whether or not you did anything after arriving there? A. I helped him do his chores. Then he asked me if I had a time-keeper with me, and I happened to look at my watch, and it was twenty minutes of nine.

Q. What then? A. He asked me to hitch up a horse for the women to go down street.

Q. What did you do with reference to hitching up the horse? A. I hitched up the horse and drove down to the house.

Q. What use was made of the horse by anybody? A. Put in the barn.

Q. Who used the horse? A. Mrs. Crittenden and one of his daughters.

Q. Which way did they drive from the house? A. I could not tell you; I didn't take no notice. I went toward the barn, and Mr. Crittenden told me — [Objected to.]

Q. (by Mr. HAMMOND). What, if anything, did you and Mr. Crittenden do after the team was driven away? A. He told me to wait for him. [Objected to.]

Q. What did you do? A. I went out to the barn.

Q. After you had waited, what did you and Mr. Crittenden do? A. Started towards his house. He told me, if I would wait, he would walk down with me. [Objected to.]

Q. What did you and Mr. Crittenden do with reference to walking down? A. I don't understand what you mean.

Q. Did you and Mr. Crittenden walk away from the house? A. Mr. Crittenden and I walked away from the house, both together.

Q. In what direction? A. Down the hill.

Q. Now go on and state what occurred as you and Mr. Crittenden were walking down the hill. A. We were walking down side by side, and by and by he holloed out, "My daughter is killed, my daughter is dead." And I jumped out from the wall and went down where she laid as quick as I could, and laid my hand on her forehead and on her hands, and I says to Mr. Crittenden, "She is dead and cold." And I didn't stay there but a moment. He asked me to go down to Dr. Canedy's.

Q. What, if anything, did Mr. Crittenden do? A. He stayed there.

Q. What did you do? A. I went down the hill as fast as I could, and let out to everybody I could see. I met Mr. Stone, the first man I met. I told him to go up the road — [Objected to.] That we found Mrs. McCloud, and, says I — [Objected to.]

Q. Whether you did, in fact, notify people as you went along? A. Yes, sir.

Q. And whether you in fact went to Dr. Canedy's house? A. Yes, sir.

Q. Whereabouts does Dr. Canedy live? A. I couldn't tell you the name of the street, but I know where he lives, all the same.

Q. Which side of the river? A. Shelburne side.

Q. Whether or not you left an errand there? A. Yes, sir.

Q. What did you do then? A. I rode back with him.

Q. Rode back with him? A. Yes, sir.

Q. And when you arrived at the point in question, what, if anything, did you see? A. Well, he got out and I hitched up his horse, and he holloed out to me to bring down a horse blanket.

Q. When you went down there, state what you noticed? A. Well, he told us to take the body.

Q. When you got down there, not what folks said, but what did you see? A. I saw the body and lots of people. The body laid there.

Q. Whether or not you noticed anything surrounding the body? A. Yes, sir.

Q. What did you notice? A. Her hat and three bundles, — three packages.

Q. At which of the times that you were there did you see the hat and the three bundles, — the first time, or the second time? A. The first time, sir.

Q. Whether or not you assisted in the work that was done in taking the body home? A. Yes, sir.

Q. What did you do? A. I helped carry the body home.

Q. How many people helped you carry the body? A. There were six of us.

Q. How was it carried? A. In a horse blanket, one at each corner, and one on each side.

Q. After reaching the Crittenden house, whether or not you stayed there any length of time? A. No, sir.

Q. What did you do then? A. I came right straight home.

Q. (by Mr. DOWLIN). What was the last answer? A. I went home.

Q. (by Mr. HAMMOND). After going to your home, what did you do? A. Changed my clothes and went back up the street, me and one of my sons, and we took the electric car and went to Shattuckville.

Q. Whether or not at any time during that day you met the defendant, John O'Neil? A. Yes, sir.

Q. Where and when? A. He was right there, I can't tell the fellow's name now, right there by the five-cent store, you might call it, Mr. Hallam's store.

Q. On what street? A. On the main street.

Q. Bridge Street? A. Yes.

Q. On the Shelburne side? A. Yes, sir.

Q. What time was it? A. I couldn't tell you; I didn't look at my watch then.

Q. About what time in the day? A. Nearly 1 o'clock, somewhere in that neighborhood.

Q. Whether or not you had any talk with him? A. Well, he came to me and asked me if I was the one that found Mrs. McCloud. I says, "Yes." That was the last he said to me.

Q. Whether or not there were any other persons with him? A. There was quite a number, I think.

Cross-examination.

Q. (by Mr. BEER). What time did you and Mr. Crittenden start down the road? A. Well, it must have been in the neighborhood of 10 o'clock, or a little before.

Q. Ten o'clock? A. Ten o'clock or before. I did not look at the time.

Q. When was it that you looked at the time? A. It was twenty minutes of 9.

Q. How near was it to the time you went down the road that you looked at it? A. I couldn't tell you, certainly.

Q. Did you go anywhere else? A. No, sir; except went down where the body was found.

Q. Before that? A. No, not before that; going down when we found the body, that was all.

Q. Mr. Crittenden and you went from his house to the spot, did you? A. Yes, sir.

Q. Which way did you go from your house to his house? A. I went up from home, away up there to his road. There wasn't but one road to go, — where I generally go.

Q. Right up the main road? A. Yes, sir.

Q. You passed where you afterwards went with him? A. Yes, sir.

Q. Which way did you go when you had discovered the body? A. Right over the stone wall.

Q. Down across the woods? A. Yes, sir.

Q. Where did you strike the road again, the main road? A. Where we took the body past.

Q. You mean you went up from where you found the body into the main road? A. Yes, sir.

Q. And then you went down the main road to Dr. Canedy's? A. Yes, sir.

Q. Did you announce her death in loud tones of voice? A. Sir?

Q. Did you speak of her death, after you had found the body, in a loud tone? A. Yes, sir.

- Q. You were excited? A. Well, I was.
- Q. Whom did you first meet on the road? A. Mr. Stone.
- Q. Where did you meet him? A. He was coming across the sidewalk, right there by Jenks's block.
- Q. Did you meet any one until you got across to the Shelburne side? A. Littlejohn.
- Q. Louis Meyers? A. He was in his hen yard.
- Q. Up on the Crittenden road? A. Yes, sir.
- Q. And you told him? A. I told him.
- Q. And you told everybody you met? A. Yes, sir.
- Q. How many people did you meet after leaving Mr. Stone? A. I didn't meet a great many.
- Q. You met Mr. Stone on the Shelburne side? A. Yes, sir.
- Q. How many people did you meet after meeting Louis Meyers before you met Mr. Stone? A. I don't know.
- Q. You met a great many persons? A. Yes, sir.
- Q. You were excited? A. Yes, sir.
- Q. And they were excited? A. Yes, sir.
- Q. How long were you from the time you left the body until you got to Dr. Canedy's? A. Not very long; I ran as fast as I could.
- Q. And which way did you go down after leaving the Crittenden road? A. Right straight down to Mr. Ward's store.
- Q. Over or along Hill Street, did you? A. Yes, sir.
- Q. Did you find the doctor at home? A. Yes, sir.
- Q. How long was it before he and you started to go up? A. He got the horse hitched up as quick as he could, and he and I rode up together.
- Q. Before you left the body, before you went for the doctor, what articles did you see lying around? A. I seen three bundles and a hat.
- Q. How far were those from the body? A. Well, five or six feet; the hat was about three feet, three or four feet.
- Q. Did you notice, particularly notice, those things? A. Yes, sir.
- Q. Did you notice what was on the hat? A. No, sir.
- Q. Did you notice what was near the hat? A. No, sir.
- Q. Did you notice any object near the hat? A. No, sir; only them bundles.
- Q. What were the bundles, — you say there were three bundles.
- A. Well, two little paper bags, and a square bundle, perhaps as big as that [showing], done up in paper. Couldn't tell what it was.
- Q. And you saw a hat? A. Yes, sir.
- Q. Also a square bundle in paper packing, and two paper bags?
- A. Yes, sir.

Q. That is all you saw? A. That is all I saw, excepting a piece of veil or black cloth hung on a bush.

Q. When did you see that? A. When I saw the body.

Q. You are sure of that, Mr. Peters? A. I am.

Q. What? A. I am.

Q. Did you see that there after you came back? A. No, sir.

Q. With the doctor? A. No, sir; I didn't take no notice of it.

Q. How long did you stay with the doctor there by the body before it was removed? A. Not long.

Q. Who were there when you came with the doctor? A. Well, there was quite a number, — quite a lot.

Q. How many? A. Oh, I should say twenty-five or thirty; may be more.

Q. Haven't you sworn in the preliminary hearing that there were fifty? A. Well, I shouldn't wonder if there were fifty.

Q. And they were all about the grounds there, weren't they? A. Yes, sir.

Q. While the doctor was doing anything to the body, they were around looking, were they? A. The doctor ordered them all off after he got down there.

Q. How soon after he got down were they ordered off? A. Three or four minutes, I presume.

Q. What did the doctor first do? A. He examined her.

Q. Examined what? A. Looked at her neck, face and hands.

Q. Anything else? A. That is all I saw.

Q. Didn't you see anything done to the clothing? A. No, sir.

Q. Did you see the doctor put his hand under the clothing? A. Yes, I did.

Q. How was she dressed? A. She was dressed in black skirt, kind of brown sack, as near as I could tell; it was not black, anyhow.

Q. Did you notice how the sack was fastened about the body? A. Yes, sir.

Q. How was it, how was the sack, cloak, or whatever it was, fastened? A. It was drawn up here [indicating throat].

Q. You have your collar up. You mean her collar was turned up? A. Yes, sir.

Q. What kind of collar to the cape? A. I couldn't tell, certain; I didn't stay long enough. I didn't take pains to look at everything.

Q. Did you look at the collar at all? A. No, sir; saw it was drawn up.

Q. Like that [indicating]? A. Yes, sir.

Q. You saw what the doctor did there, did you, and those who helped you with the body home saw what you saw? A. Yes; they were there.

Q. Mr. Littlejohn there? A. Yes, sir.

Q. He helped you, did he? A. Yes, sir.

Q. Who got to the body first, Mr. Peters? A. I.

Q. How was she lying? A. Well, she laid on her back, and her feet were about that distance apart [indicating], her head a little bit one side.

Q. How did she lie in respect to the road? How far from the road? A. Seventy feet.

Q. Did you measure it? A. People were there measuring when I was there.

Q. You don't know yourself how far it was? A. No.

Q. Did she lie with her head towards the road? A. Yes, sir.

Q. And her feet down the hill? A. Down the hill; yes, sir.

Q. How long after you saw her, when you discovered the body, and got to the body, was it, before you went for the doctor? A. I don't understand what you mean.

Q. After reaching the body, how long before you started for the doctor? A. Oh, about three minutes.

Q. Ten minutes? A. Three.

Q. Three? Did you observe the leaf mould, — leaves around? A. Some around her head and feet.

Q. Did you notice around, above and below, — some feet below the body? A. No, sir.

Q. Or above? A. By her head leaves poked up some.

Q. When you were there with Mr. Crittenden first? A. Yes, sir; the leaves looked as though they had been thrown down from the wall to where she lay; leaves all stirred up.

Q. Leaves all stirred up? A. Yes, sir.

Q. How far from the body? A. From the road to the body they called it seventy feet.

Q. Was there any change in the leaves when you got back with the doctor? A. That is all the difference; leaves poked up.

Q. When are you describing, — when you came back from the doctor, or before you went for the doctor? A. Before I went down.

Q. You have sworn you did not stay there very long? A. I didn't stay there more than three minutes.

Q. Didn't you say you went and put your hand on the forehead, and immediately left? A. Yes, sir; I put my hand on there; when he came down I told him she was dead and cold.

Q. I am not asking what you or he said. Haven't you sworn all you did was to put your hand on the forehead or face, and immediately leave for the doctor? A. I didn't leave until he told me.

Q. Did you say that? A. I said I left about three minutes after I got down there.

Q. At another time didn't you swear that? A. I don't know.

Q. Did you or not take particular notice of anything but to find she was dead, and instantly leave for the doctor? A. I said I took notice of the packages around there, and the way she laid.

Q. You have described all the packages that were around there, have you? A. Yes, sir; that would take more than a minute to do that.

Re-direct Examination.

Q. (by Mr. HAMMOND). Whether or not you touched any of the packages? A. No, sir.

Q. You were asked about the leaves. How were the leaves about her feet? A. Well, they were dug down a little.

FRANCIS L. CANEDY — *sworn*.

Q. (by Mr. HAMMOND). Your full name, Doctor? A. Francis L. Canedy.

Q. Your occupation? A. Physician and surgeon.

Q. Where? A. Shelburne Falls.

Q. For how long? A. Twenty-five years.

Q. Whether or not you are one of the medical examiners? A. I am.

Q. For how long have you filled that office? A. For nearly three terms, — twenty years.

Q. Whether or not you were acquainted with the deceased Hattie E. McCloud? A. I was.

Q. For how long had you known her? A. Twenty years.

Q. Whether or not you have been a practising physician in the Crittenden family? A. I have.

Q. Whether or not you were called by any one on the morning of Saturday, January 9? A. I was.

Q. By whom? A. By Mr. Peters.

Q. About what time? A. About 9 o'clock.

Q. State what you did in response to that call, if anything? A. I had my horse harnessed, took Mr. Peters into my carriage, and drove immediately to the point where the body was said to be lying.

Q. What disposition did you make of your team? A. I left it in the care of Mr. Peters in the road, while I went down in the woods to the body.

Q. Will you describe the situation as you saw it at that time, referring to the map, if necessary? A. The body was lying on its back, a few rods below the road, in the woods, on an inclined plane, feet down the hill, the hands by the side, the limbs covered by the skirts to the knees, dressed in a dark skirt and a dark cape, the hair done loosely and lying behind the head.

Q. Will you state as to the earth or leaves at her head or feet? A. I saw a little disturbance of the leaves; nothing excepting a bunch of leaves, a small pile of leaves, just below the feet; in other respects the leaves did not seem very much disturbed.

Q. Can you speak of the situation of her clothing any more fully in respect to the clothing under her? A. I discovered a little disturbance of the clothing. The clothing was lying smoothly. On lifting the skirts, to inspect the thighs and genital region, I found the clothing beneath the body was pulled up higher than in front. Immediately in front the skirts were down about the knees. Beneath the body the skirts were up at the buttocks, or very nearly so. The buttocks were resting on the skirts, or just at their border.

Q. State the observation you made of the body in reference to details. A. After observing the general position of the body, and the condition and matters about—

Q. State as to the condition of matters about the body. A. As I have said, I observed little disturbance of the earth or leaves. There was a small company of men collected near the body at the time.

Q. State about how many. A. Well, perhaps ten or a dozen.

Q. Whether or not Mr. Crittenden was there? A. Mr. Crittenden was there by the body. After taking this general view of external conditions, and observing the color of the face and lips, and observing they were decidedly dusky and purple, that there was a quantity of frozen froth about the mouth, about the lips, that the limbs, hands and feet were frozen, that the face was frozen, and seeing, I thought, evidences of strangulation or suffocation, I examined the region of the throat by pulling down the collar of the cape, which was turned up, and saw there discoloration marks to a very marked extent,— enough to excite strong suspicion of violence having been applied to that point. After inspecting the throat, I lifted the skirts, and found that the knit drawers had considerable leafy matter scattered over them, and mixed in their fibre; that on the back side of the aperture and the sides they were stained with blood; that the genital tract was open, genital hairs turned inward, evidences from slight inspection that sexual connection had probably been held at a recent time; and, these being sufficient evidence, in my opinion, of death by violence, I ordered the body removed to the house of her father, Mr. Crittenden, and at once telephoned the district attorney for an order for an autopsy, which was immediately granted.

Q. Can you name the persons who assisted in carrying the body from the field to the house? A. I could not.

Q. Will you state in what method it was done? A. It was carried on my horse blanket, with four or five men holding the blanket, the body in the centre.

Q. Done under your direction? A. It was.

Q. Any direction given as to the location, and whether people should frequent the location? A. Very soon after getting on the ground, and thinking there was evidence of violence upon this woman, I directed the people to leave the spot, and asked Mr. Emerson Griswold, who was selectman of Buckland, and one of the men present — [Conversation objected to.]

Q. Whether you did anything with reference to placing a guard? A. I requested a guard to be placed in the road, to keep all persons from going down in the woods.

Q. Whether or not that was done? A. That was done.

Q. About what time was the body brought to the house? A. I think it must have been shortly before 10 o'clock.

Q. Can you state any more particularly with reference to Mr. Crittenden's movements, — you said he was there? A. Mr. Crittenden was sitting by the body in a very grief-stricken attitude when I came upon the ground, and after my inspection I pointed out to him some of the reasons I had to think violence had been used, so that he might know why I was taking the steps I should find necessary to take; and he immediately went out of the woods toward home.

Q. What is your recollection with reference to any parcels? A. I saw no parcels in the woods, saw nothing there but a hat lying on the leaves a little above her head.

Q. Whether or not you can identify the hat [showing hat]? A. Yes; I should think this was the hat, sir.

Q. And what was its location with reference to the body? A. It was behind, above the body, and above the head, perhaps three or four feet.

Q. Where first did you see the other parcels, if at all? A. I saw them at the house.

Q. The bag and the paper bundles? A. At the house. The bag was first shown me by Mrs. Crittenden, Mrs. McCloud's mother.

Mr. BEER. We object to anything seen at the house, until it has been shown that it came from the spot.

SHELDON, J. That is a question merely of the order of the evidence. Of course it is of no consequence, unless connected with the tragedy. You may proceed.

Q. (by Mr. HAMMOND). Whether or not when you were at the house you saw a bag? A. I did, sir.

Q. Whether or not you can identify it? A. That is the bag [bag produced].

Q. And whether or not you saw a pocket-book? A. I did.

Q. And whether or not you can identify it? A. Yes, sir; I can identify it. I opened it and examined it.

Q. [showing pocket-book]. And where did you see the bag, and by whom was it brought to you? A. Brought to me by Mrs. Crittenden, Mrs. McCloud's mother. This is the pocket-book [showing].

Q. And whether or not you examined the pocket-book at that time? A. I did.

Q. What, if anything, did you find its contents to be in the way of money? A. Eight cents.

Q. Know what currency? A. Three pennies and a five-cent piece and a check.

Q. What was the check? A. Forty dollars.

Q. By whom did the check purport to be signed? A. George D. Crittenden. [Objected to, that the check was the best evidence.]

SHELDON, J. You have the check?

Q. Look and see if the check is there? A. This is the check, sir.

Q. Whether or not that is the check? A. That is the identical check that I had in my hands.

Q. Whether or not substantially the other papers you have seen were in the wallet? A. These papers were here, miscellaneous collection; bits of paper, etc.

Q. And whether or not you can identify the cloak which the woman wore? A. I think I can, sir.

Q. Will you look at the article shown you? A. This is the cloak.

Q. And whether you can identify her dress, the underskirt and the overskirt? A. The overskirt was a black skirt; I should say this was the one.

Q. Whether or not you can identify the underskirt? A. This she had on; yes, sir, I identify that, the color particularly.

Q. Now, with reference to the shoes and overshoes and underclothing? A. These are the shoes she wore, and this is the character of the underclothing. I didn't inspect every article of clothing.

Q. If you will see whether that was the clothing that was on her body when you examined her? A. I should say that was the clothing.

Q. What, if anything, was done to the articles of clothing in removing it from the body? A. They were removed separately, commencing at the outside garments.

Q. Whether or not they were removed whole, or removed by cutting? A. Most of them were removed whole, I think. I am not sure but, to facilitate getting them off, some of them were torn; I can't say about that.

Mr. KNOWLTON. We offer these identified articles of clothing. [Clothing admitted in evidence.]

Mr. HAMMOND. And also the wallet?

Mr. KNOWLTON. No, not quite yet, because we get back to that by and by with other witnesses.

Q. Whether or not any people were summoned to assist you in the autopsy? A. Dr. F. H. Zabriskie of Greenfield was summoned to assist me in the technical part of the autopsy and Mr. William Johnson, the undertaker, to assist in that part that is usually taken care of by the undertaker.

Q. What persons, if any, were summoned as witnesses? A. Mr. Edwin Baker and Mr. Wilfred S. Ball. Mr. Munyan was also present.

Q. Whether or not any record was made of the observations? A. There was.

Q. Whether that has been preserved? A. It has.

Q. Will you state in detail in what place the body was located for the examination, and state all that occurred after the body reached the house? A. The body was placed in Mr. Crittenden's front room, and —

Q. Which is that, with reference to the street and approach, — whether it is the nearest? A. It is the nearest corner room, the first room. The body was placed there on a sofa, with the clothing undisturbed, everything left exactly as found in the woods. I followed this course, — after sending the body on to the house, and stopping for a short time to look about to see if there was anything that I could see that I ought to observe, I followed the body up to the house, had the packages and property that was found with her in the woods placed near the body in this room, and directed that it be kept there, and all persons kept away from it, and nothing disturbed until my return.

Mr. BEER. We object to what was stated in conversation.

Mr. HAMMOND. I don't ask for that.

SHELDON, J. The fact that he directed the articles to be kept is competent for the purpose of the identification of the articles.

Mr. BEER. And, moreover, we object to the doctor stating what was found, stating a fact that is not within his own knowledge, evidently.

SHELDON, J. Well, nothing but his own knowledge is competent, of course, on these matters.

Q. Then what followed? A. I went down street, went into the first telephone office, that is, the public office, and telephoned to the district attorney, Mr. Hammond, at Northampton, that the dead body of a woman had been found lying in the woods.

Mr. BEER. We object to this.

Mr. KNOWLTON. We don't care anything about it.

Q. Whether or not you received your order? A. Asking permission for an autopsy, to hold an autopsy on this body, and that an officer be sent, which was granted, and the officer sent.

Q. What officer came? A. Mr. Munyan.

Q. Whether or not he brought the order for the autopsy? A. He brought the order for the autopsy, and arrived about 11 o'clock.

Q. Then what did you proceed to do, if anything? A. On the arrival of Dr. Zabriskie, at fifteen minutes before 1, soon after his reaching my office, which was about 1 o'clock, Dr. Zabriskie and myself went to Mr. Crittenden's house and proceeded to make this autopsy.

Q. Whether or not the witnesses whom you have mentioned were present from the start? A. They were.

Q. Will you go on and state? A. In the first place, while the body was still lying on the sofa, as it had been placed, and before it had been touched at all, the attention of the witnesses was called to the body, to its appearance, and the position and condition of its clothing. They were asked to observe the face, its color, and the neck and the marks upon the neck, and the disposition of the clothing. The clothing was then,—the skirts were then lifted up, and the position or the condition of the drawers and the genital organs was shown these witnesses, and they observed them; and after the body had been examined in its external parts, the clothing was removed, and the body was placed upon a table for dissection.

Q. Will you state, Doctor, at this point, any more fully, if you can, the external appearance as to the neck? A. There were discolored marks on the front of the neck over the larynx, which is this prominent point here sometimes called Adam's apple, and the upper part of the windpipe.

Q. What were they? A. On the left side there were four marks,—four abrasions.

Q. Which side were the four marks? A. On the left side of the neck; on the right side there was one.

Q. (by Mr. KNOWLTON). Could you illustrate by my neck? A. Yes, sir. [Witness illustrates.]

Q. Let the jury see. A. I want to make the marks on the same side of you. The four marks were on the left side of the neck, and the one mark was on the right side of the neck, like this. Three of these marks upon the left side were very distinct, with the points of the fingers pressed into the tissue,—the imprints of three fingers on the left side. This mark was more distinct in the woods, and before the body thawed, than it was afterwards, because in its frozen condition there were little cusps, little depressions, where the finger ends met on the left side of the neck; and also a depression on the right side of the neck,—there was a fourth mark on the left side of the neck which was not so much of a depression; but there were nail marks, or little abrasions of the skin, as though they might have been made by nails, at the end of each of these four depressions, or four

marks on the left side of the neck. They were just there, about one inch and a quarter from the median line, from the middle, and one upon the right side.

Q. Where? A. Nearly opposite, about the same distance from the centre. There were also two abrasions of the under side of the jaw or chin, one upon each side, from which small bits of skin had been chipped off. One of these, about one and three-quarters inches —

Q. (by Mr. HAMMOND). Indicate on your chin the position, please. A. Just on the under side of the chin, here. One of them measured one-quarter of an inch in diameter, the other was smaller. I have notes of the size of these.

Q. Will you please refer to them, if you desire? A. These marks and lengths, if I am asked to state definitely, I shall have to state from these notes.

Q. Will you refresh your recollection from the notes, if you desire?

Q. (by Mr. BEER). I would like to ask here when those notes were made? A. They were made during the autopsy.

Q. By yourself? A. No, sir.

Q. In your presence? A. Yes, sir; by my dictation.

Q. (by Mr. HAMMOND). Whether or not that is the record of the autopsy? A. This is the record of the autopsy, complete.

Q. Now, refreshing your recollection, will you go on? A. Abrasions on the front of the neck, of the larynx, extending to the left of the centre of the neck, one and one-half inches; most marked one inch from the centre; four distinct nail marks at this point on the left side, and one distinct nail mark and depression on the right side. Abrasion on the lower side of the jaw or chin, as it might be called, one and three-fourths inches from the centre, one-fourth inch in diameter, in which a small piece of the external skin had been chipped off and was gone. Also an abrasion on the right side of the jaw, two and one-fourth inches from the median line, which was smaller, and its diameter was not measured.

Q. Now, will you go on and state in the order of events the work of the autopsy and the observation? A. The first section was made at the throat, at the neck. The skin was laid open from the chin down to the sternum, which is the breast bone, and turned back. As it was turned back, the tissues underneath the skin were noted to be discolored, and the vessels very full of blood. On cutting through the tissues immediately below the skin, and the deeper parts, as the superficial veins of the neck were opened, dark, tarry blood flowed very freely, and these veins were very much distended with that material. On coming down to the larynx, the windpipe, the second cartilage, the cricoid, was found pressed backward and upward, so

that its relation to the cartilage above, the thyroid cartilage, was disturbed; and upon coming upon the windpipe itself, the second and third rings were broken in front. The section then extended downward.

Q. Won't you indicate the location of the rings that were broken, on Mr. Knowlton, perhaps? A. This is beginning at the top of the windpipe; this is the opening of the windpipe, the larynx, where the voice is found, and the rings are about here.

Q. Where, with reference to the external marks, were these rings? A. Well, in a normal position they were rather lower than the marks, — the rings, — as though the windpipe had been pulled upward. In opening the thorax to examine the condition of the vital organs, as I separated the connection of the clavicle with the breast bone, the sternum, I opened some of the larger veins of the upper part of the body, and they were so full of this dark, tarry blood, that it poured out in great quantity, deluged everything, and we had to do considerable wiping away to get rid of it. The thorax, the chest, was then opened by the usual manner of incision, the breast bone removed, and we came down upon the lungs, which we found very full of blood, engorged; and upon lifting them, and making a section, dark, tarry blood flowed very freely. On examination of the heart, which was examined first, as it lay in its normal position in the chest, the condition of the pleural sacs was investigated, as to whether they contained fluid or not. The condition of the heart case, the pericardium, was investigated. Neither contained any fluid, both were in normal condition. Of the cavities of the heart, the left auricle was distended to its utmost with this same dark, tarry blood, and, as the vessels that are given off from the heart were cut off in order to remove the heart from the chest, to make a more perfect examination, a large amount of the same kind of blood flowed from the pulmonary artery and from the large veins that return the blood from the body to the heart. The heart was then brought out separately, its cavities laid open, —

Q. What is the description of this blood, — whether it was arterial, or venous? A. Venous, dark; not clotted, liquid.

Q. Dark, venous blood? A. Dark, venous blood; very dark.

Q. Go on. A. The cavities of the heart were laid open, and all its valves carefully inspected, and its structure, and nothing found that was unnatural or abnormal in its condition in any way whatever.

Q. As to the organs of the chest, what do you say with reference to any appearance of health or disease, take them as a whole? A. The organs of the chest were in a healthy condition, if we exclude this excessive venous congestion. The abdomen was laid open and

its contents examined. The stomach contained a small quantity of liquid matter, which was food in the last stage of digestion, called, technically, chyme. It was not weighed or measured, but estimated at about two ounces. The stomach itself, and the intestines, liver, spleen, pancreas, the kidneys, were each examined in detail carefully and found to be healthy. The uterus, the ovaries, the fallopian tubes, were carefully examined, and found to be healthy. The vaginal tract was carefully examined, before dissection was commenced, from below. After dissection had been carried to this extent, and the uterus had been separated from its junction with the vagina, the vagina was examined both from above and below, and specimens of the contents of the vagina were removed by Dr. Zabriskie, and taken away for microscopical examination.

Q. Whether you determined whether or not she was at her monthly period. A. At that time menstruating? There was no stain of blood within the uterus.

Q. The condition of the vagina state more fully, and what was done. A. The condition of the vagina was examined somewhat more in detail before any dissection was commenced. From below, the condition of the external parts, the lips of the vulva, were examined, and the amount of blood-staining about the external parts was looked into, and its source investigated. It was found to come from abrasions of the connection of the vulva with the vaginal canal, one on each side, larger on one side than on the other; from which small portions of the mucous membrane had been abraded, and from those surfaces dark-colored blood had been coming, and was still oozing. At one point, as the vagina was pulled a little more open, I discovered in this canal a portion of a beech leaf, which I removed with my fingers, and also two genital hairs.

Q. Whether anything was done with reference to preserving what was taken from that organ. A. The specimens taken from the vaginal tract were placed upon four individual butter plates, three specimens from the vagina, and one specimen from the uterus on another. The specimens from the vagina on the three plates were taken before the dissection of the body began; the specimen on the fourth plate was taken after the dissection was completed, and after the uterus had been removed from the body. Dr. Zabriskie removed these by the use of a teaspoon, commencing at the bottom, and placing a specimen on plate No. 1.

Q. You mentioned four individual plates that had matter placed upon them. A. Yes, sir.

Q. What, if you know, was done with the four plates, or by whom were they taken? A. Dr. Zabriskie took them away with him.

Q. And the further examination of those plates you did not attend

to yourself? A. I did not attend to, no, sir, for the reason that my microscope was not at home.

Q. And whether or not that completed the examination, or can you state further? A. It did.

Q. With reference to the condition of the stomach, can you say what that indicated, with reference to the time food had last been taken before death? A. Food must have been taken some five or six hours before death.

Q. With reference to the condition of the external sexual organs as you found them, when the body was in the field and frozen. A. The vulva was gaping, was open, and the genital hairs turned inward, in toward the vaginal—in upon the vaginal tract; and the blood on the vulva, the lower portion stained with blood.

Q. Now, with reference to the windpipe, where are the attachments of the windpipe to other organs? A. The windpipe begins at the top of the larynx, which is composed of cartilages, sometimes called Adam's apple, and at the bottom it divides into branches called the bronchial tubes, which connect with the lungs. Its attachments at the top are here with Adam's apple and at the bottom with the lungs.

Q. With reference to the broken rings, I wish to ask you whether those breaks connected themselves with the marks that you saw? A. They were below the marks that I saw.

Mr. BEER. What is that answer?

THE WITNESS. They were below the marks that I saw. The marks supposed to be made by finger nails were above the broken rings, higher up on the neck.

Q. Upon your examination of the body of this woman, are you able to state your opinion of the cause of her death? A. I am.

Q. State it, please. A. Strangulation by violence applied to the throat.

Q. Why do you come to that conclusion? State the evidences. A. Because, in the first place, of the discoloration of the face, of the skin of the face, the appearance of the eyes, of the marks upon the throat, the condition of the veins of the neck, and the veins of the body and the appearance of the body. In making my statement of the observation, I did not speak of the dissection of the brain, which was done; and the veins of the brain were very much distended by dark, fluid blood, all indications of strangulation or asphyxiation, which are pretty much synonymous terms as to cause of death.

Q. You stated as to the action of the lungs, as they acted, indicating your conclusion. A. The normal respiration, as the blood is carried from the heart, the venous blood, the dark-colored blood is taken from the heart, the left ventricle, to the lungs; it is taken

to the lungs, and becomes mixed with oxygen, and its color becomes changed from a dark hue to a light hue, the color of ordinary blood, which is much lighter, and then passes without obstruction through the left side of the heart and through the body; but if the blood coming from the left side of the heart does not come in contact with air and become changed by the oxygen it absorbs, it does not become changed in color, and the capillaries, trying to guard the system from carrying the venous blood over the body, arrest the circulation, place an obstruction there, and the lungs become engorged, because the venous poisoned blood will not flow freely into the right side of the heart and go over the body; and the consequence is that there is a dam formed in the lungs, and the lungs become full of dark, venous blood, and the veins all over the body, from the same cause, become distended with dark-colored blood, and that is the cause of death. .

Q. And whether all those facts existed in this case. A. They did, in a marked degree.

Q. Whether there is any doubt about it. A. None whatever.

Q. Will you state what the condition of the sexual organs indicated as to any violence there, and what it was? A. It indicated that a violent connection had been held with the woman, either immediately before or immediately after death.

Q. Why do you say that? A. Because of the blood that was flowing, of the dilated condition of the vulva and what was found in the tract, by the genital hairs which had been carried in there from something thrust from the outside, and from what was discovered subsequently.

Q. And can you state whether there is any significance, in the fact that the organs were not retracted, as to the time when the connection took place with reference to the moment of death? A. Yes, sir; that is the reason that I say it must have been very near the time of death. If life had continued on, there must have been natural reaction of the muscles, and a restoration to their normal condition, which had not occurred.

Q. I wish to ask you with reference to the condition of the leaves and the amount of leaves under the body. A. The leaves were very thick there in the woods at that time when they were dry.

Q. Will you indicate in some way how thick? A. I did not make any examination to ascertain how thick. I only noticed as I walked in there that there was a great deal of leaf matter lying about, and I noticed just below her feet there was quite a pile of leaves.

Q. Was there any snow on the ground at that time? A. No, sir.

Q. And with reference to the view of that place from the road, whether in the day time you could see down there. A. You could.

Q. Have you visited the place within a few days? A. I have visited it lately.

Q. When? A. Last Saturday, I think.

Q. Whether or not any difference appears in the situation of the leaves on the forest road. A. There is very much less accumulation of leaf matter, and the water has come down on the road in quantities, and somewhat changed the appearance of things. There is a little brook there now that was not there last fall and winter.

Q. Let me ask you whether your attention was called to the veil as you examined the location in the road? A. After the body had been removed, and while I remained on the ground, looking about for any evidence that might be found there, I discovered a veil hanging on a little beech twig between the body and the road.

Q. I think I did not ask you what final disposition you made of the articles which were connected with her person; in whose custody you left them. A. I placed them all in the custody of Mr. Munyan.

Q. He is the State police officer? A. Yes, sir.

Q. Will you examine the article passed to you, and state whether or not you identify it? A. Yes, sir.

Q. What is it? A. A small black veil.

Q. Whether that is the one you found. A. That is the one I found on a small beech tree in the woods.

Q. And whether that was afterwards delivered to Mr. Munyan. A. It was.

Q. About how long after you arrived was it that State Officer Munyan appeared on the scene? A. My first arrival in the morning?

Q. Yes, sir. A. We reached the body something after 9 o'clock, and Mr. Munyan came on that train that reaches Shelburne Falls a few minutes after 11, and went immediately up there with me.

Q. Whether or not the situation was substantially the same when Mr. Munyan arrived as it was at the time of your first arrival. A. It was.

Q. From anything you saw, can you state an opinion as to how long the woman had been dead? A. No, sir; she must have been dead long enough to have that part of the body that would freeze with the degree of cold which then existed, frozen.

Q. What parts of the body were frozen? A. The hands, arms, feet, face. The parts covered by the clothing were not frozen to any extent. It was not a very cold night.

Q. Can you identify the position of the body with reference to any trees which are notable, of which you can speak a little more definitely? A. Not far from a large hardwood tree — beech tree, I think it was — that was just below the feet of the body. There was a large fresh

growth of forest trees about there, with more or less underbrush, but the underbrush was not present immediately about the body.

Q. Whether that tree has a blaze or mark on it. A. It has; I saw it marked.

Q. By whom was it marked? A. By Mr. Munyan.

Q. Can you describe the location of the shrubs and saplings at the point where you found the veil, so you can indicate it any more definitely to the jury, whether that was marked too? A. It was marked; the little shrub carrying the veil was marked by Mr. Munyan, in my presence.

Q. How large a shrub was it? A. Not very large; the trunk of it was not much larger than a large finger.

Q. And about how high? A. Perhaps three feet high.

Q. Whether or not there was a taller, more firm sapling near to it? A. There was a larger one near by, which I noticed had been cut off as I was in the woods Saturday.

Q. Whether or not it indicates truly the position in which you found the veil? A. Yes, sir.

Q. How far from the path and how far from the road? A. Only a few feet from the path, and nearer to the road than the body, — perhaps two-thirds of the distance from the road to the body. I have not paid special attention to these distances.

Q. What relation had this place of the veil to the shortest distance from the body to the road? A. It was the shortest distance.

Q. Whether or not it was on the line of the shortest distance? A. It would be.

Cross-examination.

Q. (by Mr. BEER). Where were you, Doctor, when Mr. Peters came for you? A. I was in my office.

Q. What time of day was it? A. About 9 o'clock.

Q. Did you consult any timepiece? A. I did not.

Q. Before you departed? A. I did not.

Q. When was the first time that you saw what time it was after that? Where were you? A. I don't know, sir; I don't know that I consulted any timepiece that forenoon.

Q. All the times you have spoken of, you guess at? A. I approximate time by the way I remember my movements and the manner I carried on my work. Some of them are in reference to railroad time and arrival of trains.

Q. Whether these trains were on time, you don't know? A. I don't know, sir.

Q. You proceeded with Mr. Peters by what route? A. By the direct route, the nearest route, which is down Bridge Street, across the bridge, up Clement Street, and up the Crittenden road.

Q. How long were you in getting ready after he came? A. Very short time.

Q. Did Mr. Peters hitch up the horse? A. No, sir; the man who takes care of my horse hitched up my horse.

Q. You heard Mr. Peters say he hitched it up, to-day, didn't you? A. Hitched up my horse? I don't remember that I heard him say so.

Q. Whether he did or not? A. He may have gone to the barn and assisted the man; I have no knowledge of his hitching up the horse.

Q. The horse was not hitched when he came? A. No, the horse was not hitched when he came; I ordered it hitched.

Q. Had you any patients? A. At the office?

Q. Yes, sir. A. Not at that time.

Q. Did you see any people as you got up to the Crittenden road, and people going towards the scene? A. I did not.

Q. When you got there, who were there? A. I recall Mr. Littlejohn, Mr. Emerson J. Griswold, Mr. Louis Meyers and probably a few other men. I do not recall their names at the present.

Q. Was Edward Morrissey there? A. I don't know, sir.

Q. Don't you know him? A. Yes; my attention was at once upon the woman, not upon who was there.

Q. There were several persons around the body? A. There were.

Q. About how many were there around the body? A. A small company of men; I should say ten or twelve.

Q. What was the first thing you did to the body? A. I looked at it.

Q. Then? A. After looking at it, and discovering all I thought I could by looking at it, I began to examine into its condition, and the first time I laid my hands on the body was to draw down the collar of the cape and examine the neck.

Q. What was the next? A. I lifted the skirts and discovered the condition of the limbs and the genital organs.

Q. How far did you raise the skirts? A. I raised the skirts enough to see what I was looking for.

Q. Did you let them lie on the upper part of the body? A. No; I think I kept them in my hand.

Q. How long were you looking? A. A very short time.

Q. Could you see plainly the genital parts? A. I could.

Q. Who were there then? A. Men were about.

Q. What was the next thing you did? A. Called for the horse blanket, and ordered the woman removed to the house. I think the next thing I did was to call Mr. Crittenden's attention to the evidences that I had seen of violence, so that he might see that it was necessary for me to take such steps as I knew I must take.

Q. Was the collar buttoned upon the neck? A. It was not; the cape was buttoned. The collar wasn't buttoned; there was nothing attached to the collar.

Q. The collar was turned up? A. The collar was turned up.

Q. And all the means of adjustment were engaged in the adjustment? A. Yes, sir.

Q. Who were present during the removal of the body? A. I don't know.

Q. Did you superintend its removal? A. I superintended the placing of it on the horse blanket.

Q. Do you know who lifted the body? A. I do not.

Q. How was it lifted? A. It was taken by the arms and the legs, and lifted up and placed on the blanket.

Q. How many men lifted? A. I do not know, sir.

Q. Two, or three, or four? A. I don't know.

Q. You didn't take notice? A. I did not.

Q. You didn't take notice how they lifted her? A. Only that they took hold of her, and lifted her up on the blanket.

Q. Did anybody's hands go under the buttocks? A. I don't know.

Q. Did anybody take her by the feet? A. I don't know.

Q. Can you describe any action of those who lifted her from the ground to the blanket? A. No, sir.

Q. You did not follow her to the house, did you? A. Not immediately.

Q. How long before you left? A. I should say about ten minutes; I remained on the spot about that time.

Q. Whom did you leave on the ground? A. I left Mr. Louis Meyers standing in the road, and directed him to keep all people from going down into the woods.

Q. What did you do at the house with the body? A. I looked at it to see if it was in proper position, as I wanted it left.

Q. Did you examine any of the parts at all? A. Not specially.

Q. How long did you stay there? A. A very few minutes, perhaps not more than ten. I hastened away, because I was anxious to get my order for the autopsy.

Q. Who was there when you came to the house? A. There was no one but Mr. Crittenden and his family.

Q. Did you see Mr. Stone there? A. I don't remember that I saw him. I don't recall him.

Q. You saw the bags at what time of the day? A. I am not sure whether Mrs. Crittenden showed me this bag on my first or second visit to the house. I visited the house three times that day.

Q. Have you stated that it was about noon? A. My second visit was about noon.

Q. Have you not sworn, did you not swear at the preliminary hearing, that it was about noon that you saw the bags? A. Perhaps I did. I don't remember now.

Q. You don't remember now whether it was your second visit? A. No; the preliminary hearing was nearer the time of the event than it is now.

Q. Where was the bag, where were you when you examined the bag? A. In the front room with the body.

Q. Who were there then at your second visit? A. Mr. Munyan was with me.

Q. At the house, who were they? A. I saw Mr. Crittenden and Mrs. Crittenden and Mr. Munyan. I don't remember other people.

Q. How many persons were there in the house and about the premises when you got there? A. I don't know, sir.

Q. What time did Dr. Zabriskie arrive at the house? A. Soon after 1 o'clock.

Q. In the woods, did you notice whether her clothing was torn or not? A. I did.

Q. Was it? A. It was not.

Q. You have described all that you saw in the woods, have you? A. I think I have.

Q. About the body? A. I think I have.

Q. Who undressed her? Who took the clothing off? A. Those that assisted me in this work, — the undertaker, Mr. William Johnson, I think Mr. Edwin Baker assisted, and Dr. Zabriskie.

Q. From the time of the commencement of doing anything after returning with Dr. Zabriskie, did you lose sight of the body? A. I did not.

Q. After the body was undressed, what was the first thing you did? A. After she was undressed, the surface of the body was again looked over for marks, abrasions; and then this matter was removed from the vaginal tract.

Q. Was that the first thing you did about the body? A. The first thing was a re-examination of the genital region, and the removal of these specimens from the vaginal tract.

Q. And that was the very first thing that was done with the body? A. Yes, sir; after it was placed on the table and looked over.

Q. Had you inserted your finger into the vaginal tract before that? A. Before the specimens were removed with a spoon?

Q. Yes, sir. A. I did.

Q. Where was that done? A. It was done there on the table after the body was undressed.

Q. Then what was done? A. After the vaginal tract was examined, you mean?

Q. Yes, sir. A. The neck was dissected.

Q. What did you use, a scalpel? A. A scalpel.

Q. Where did you commence cutting the neck? A. I commenced at the point of the chin.

Q. Point out what lines. A. I drew a straight line exactly in the centre from this point here [showing] down to the top of the breast bone.

Q. How deep was the line? A. Through the skin, the first one.

Q. How was the body lying when you did that? A. The head and the neck were lifted up, and a block of wood was placed under it so that the head was tipped over backwards in this way [showing], in order to bring the neck prominent, so that the work could be done more easily and more carefully.

Q. You cut down to the sternum with your scalpel? A. I carried it down to the sternum.

Q. What intervenes, if anything, between the skin and the rings of the trachea? A. In the first place, we separated the skin, then the fasciæ, the superficial and the deep fasciæ. There are two thin muscles, and the connecting point of the upper part of the thyroid gland crosses the trachea at the middle towards the lower part. These are about all the structures that are divided if we keep near the middle line.

Q. Did you make more than one cut from the point of the chin to the sternum? A. I made the first opening by drawing my knife once down, but only through the skin.

Q. What did you do afterwards? A. I dissected further.

Q. What? A. I dissected the skin back, drew the flap back?

Q. How many lines did you make in order to put the flap back? A. I separated the attachment of the skin from the parts on the line, so that the skin could be turned back as you would turn back the flap of your coat, to see what was under there, to note the discoloration and the condition of the superficial veins.

Q. Did any of the thyroid glands accompany the flap? A. No, sir.

Q. Nothing but the skin was in the flap? A. No, sir.

Q. As soon as you penetrated the skin the blood began to flow? A. Not at the first incision, to any extent; blood did not flow to any extent.

Q. How soon did the blood flow? A. As soon as the deeper parts were opened, when I went through the fasciæ, it began to flow, but not extensively until I came down upon the large veins.

Q. Did you follow the same course you began in cutting through the thyroid glands, the muscular tissues that are found there? A. I kept this first straight incision through the whole examination. I

made no other, only carried this down as far as it was necessary to reach the structures I was seeking for.

Q. How many incisions did you make before you reached the trachea? A. I don't remember the incisions; I went down with great care.

Q. Can you tell me when the blood began to flow, — at what point? A. After I had cut through the deep fasciæ, and down into the trachea, through some veins in the lower end of the trachea, near the lower end of the incisions, the blood began to flow; and later on, as I began to separate the attachments of the sternum and the clavicle, the collar bone, I inadvertently opened a larger vein, which bled very freely, and we had too much blood.

Q. Did you take out the trachea? A. I did not.

Q. Did you disarticulate any bone? A. Yes, sir.

Q. In the region of the trachea? A. I beg pardon?

Q. Did you disarticulate any bones in the region of the trachea? A. No, sir.

Q. Did you disarticulate the clavicle? A. I did, after I had done with the trachea and was opening the chest.

Q. After you had done what? A. After I had finished my examination of the throat, and was opening the chest to examine the lungs. It was necessary to disarticulate the sternum, its connection with the clavicle, and the first rib. But I disarticulated no bones during my examination of the neck or the trachea.

Q. You did not draw out the trachea, as I understand it, at all? A. Didn't draw it out?

Q. Yes, sir. A. No, sir; I didn't remove it from the body, if that is what you mean.

Q. That is what I mean. A. Well, I didn't.

Q. And the trachea was there when you disarticulated those bones? A. It was.

Q. Did you have any microscope with you? A. I did not.

Q. Had you any other means than the naked eye of seeing all the objects that you have described? A. I had no other means; didn't need any other.

Q. No person assisting had anything else? A. No, sir.

Q. Who made the incisions? A. I did.

Q. What did you do after removing the thyroid glands? A. I didn't remove the thyroid glands.

Q. You didn't remove them at all? A. No, sir; there was no occasion to remove the gland, or do anything with it.

Q. Did you come in contact with the isthmus of the thyroid? A. Cut it through.

Q. When did you cut it through? A. In coming down upon the

trachea, and just before reaching the trachea. It lies just in front of it.

Q. The sterno-thyroid comes down from where? A. The sterno-thyroid comes down from its one attachment at the breast bone, the other on the thyroid cartilage at the top of the windpipe.

Q. Both of those glands? A. Those are not glands.

Q. Well, the thyroid muscle? A. That is a muscle; yes, sir.

Q. They meet there? A. They meet?

Q. The sterno-thyroid. A. What do you mean?

Q. Did you cut them? A. I presume I cut some of their fibres.

Q. You are not sure? A. I know I did; yes, sir.

Q. Had you seen the trachea before you cut them? A. I had seen parts of it.

Q. When you saw it, was blood flowing? A. When I saw the trachea?

Q. Yes. A. Not when I first saw it; no blood had started when I first saw the trachea from any point.

Q. Is there a membranous covering over the cartilage of the trachea? A. Yes; the trachea is enclosed in a membrane.

Q. Did you cut that? A. Yes, sir; pulled it off, so we could inspect these broken rings.

Q. Now, at what point were those rings broken? A. Broken near the centre, — the middle point.

Q. Just about the centre? A. Yes, sir; very near.

Q. Was it on the concave, or convex? A. On the convex.

Q. Did you see inside? A. The trachea?

Q. Did you look inside? A. No, sir; I did not look inside.

Q. Could you see through the trachea? A. I examined the rings particularly, and called the attention of all the witnesses to the condition.

Q. Was the break complete? A. It was complete, — a perfect separation.

Q. So there were two parts? A. There were two parts.

Q. Did you examine the edges? A. I did.

Q. Was it a splintered edge? A. A roughened edge, and irregular; a fractured edge.

Q. You are sure of that? A. I know it.

Q. You had to take off the membranous covering before you could see the trachea? A. I had.

Q. And that was done by the scalpel? A. It was, and by my fingers.

Q. Whereabouts, in relation to the isthmus of the thyroid, do the second and third rings of the trachea lie? A. They are above the isthmus of the thyroid a short distance, — not very far; the isthmus crosses near that point.

Q. Where does the trachea close up to the vertebræ start from?
A. Well, it is an anatomical point that I do not know that I can answer exactly. I am not on examination for anatomy, as I know of.

Q. Whether the cervical? A. Certainly it is in the cervical region.

Q. What part? A. The middle or upper part.

Q. Did you say the trachea starts from the cervical vertebræ? A. I said no such thing.

Q. What did you say? A. It starts from the cartilage of the larynx, and lies in front of the cervical vertebræ, immediately back of the line of the œsophagus, and back of the œsophagus to the neck or spinal column.

Q. Where do you commence to count the rings of the trachea from?
A. It commences at the top.

Q. You count the trychoid as one? A. I do not; the trychoid is one of the cartilages of the larynx.

Q. After you got through inspecting the neck, what part did you devote your attention to? A. The chest.

Q. What did you do then? A. I opened the chest, in order to inspect the heart and lungs.

Q. What parts did you cut? A. I made an incision, the next incision was carried from the top of the sternum down to the bottom of the body, the pubic bone, laying open the chest and abdomen at one cut.

Q. Did you cut the ribs? A. I cut off the cartilages of the ribs, and separated the articulation of the sternum from the collar bone and lifted the sternum out, which opened my way down into the cavity itself.

Q. And you examined the stomach? A. I did.

Q. And you found in that? A. About two ounces I judge.

Q. Is there digestion taking place after death? A. No, sir; not to any extent.

Q. You are sure of that? A. Yes; not to any extent. Some chemical solution might go on, but vital digestion ceases with the cessation of vitality.

Q. Did you find any arterial blood in the organs? A. No, sir; I did not.

Q. Did you say in the preliminary hearing that you found arterial blood in one of the auricles? A. I don't remember that I did.

Q. When was it as to the progress of the autopsy that you made incisions in respect to the uterus? A. The uterus was the last organ examined,—no, the brain was the last organ examined. The uterus was examined at the completion of the examination of the contents of the chest and the abdomen.

Q. The only thing that you did to the vagina was to insert your finger, and the extracts were made by means of the spoon? A. Yes, sir.

Q. And then you turned your attention to the neck? A. This was done before any dissection of the body was commenced, this extraction of matter from the vagina for microscopical examination; and the close inspection of the external genitals, so far as could be reached from below, was made before any dissection of the body was commenced. Later, after the dissection was completed, the part was again examined, and examined from above, looking downwards from above, which we could do at that time.

Q. Had there been any openings made in the region of the vagina before the extractions were made? A. None.

Q. Did you have any instrument to inspect any appearance? A. No, sir; only those necessary to make the necessary openings.

Q. From what point were the extractions? A. From below.

Q. Any difficulty in inserting the spoon? A. None whatever.

Q. No incision had been made? A. None.

Q. No stretching of the part? A. No, sir; not to any extent.

Q. Did you take particular notice of all the private parts? A. I did, as thoroughly as I was able.

Q. Were the labia well formed? A. I should say they were distinct, — the two labia were distinct, majora and minora.

Q. Did you notice anything unusual about the hair on the mons veneris? A. I did not; it was plentiful.

Q. Did you take any of the hair? A. I did not.

Q. Did you examine any of the hairs under a microscope? A. I did not.

Q. At any time? A. I did not.

Q. Did you examine the leaf, that you call a leaf, under a microscope? A. I did not.

Q. What became of the leaf? A. It was dropped with the waste there after the attention of the witnesses was called to it, and where I found it.

Q. There was nothing matting the hair together? A. Not specially, that I recall.

Q. Were there any of the contents that you found upon the back of the drawers preserved? A. No, sir.

Q. Any of it examined? A. Only inspected by the eye.

Q. Not been put under any other power? A. No, sir.

Q. How plentiful was the blood flowing from the vaginal tract? A. Quite a large amount, — enough to stain the drawers.

Q. Was this venous or arterial blood? A. Venous, dark-colored blood.

Q. How many hairs did you find in the tract? A. I removed two hairs myself; more were removed later by Dr. Zabriskie.

Q. Know what hair it was? A. It had the appearance of being genital hair.

Q. Can you swear it was human hair? A. Can only swear to what I have stated.

Q. (question repeated). A. No, sir.

Q. Did you examine the ends? A. Of the hairs?

Q. Yes. A. I did not.

Q. In the case of drowning, doctor, are the same experiences undergone as in case of asphyxiation? A. Yes, sir; to a large extent; post-mortem marks are much the same.

Q. You know that persons apparently dead, taken from the water, drowned, are resuscitated? A. They are sometimes.

Q. The life has not gone from the body, has it? A. No, sir.

Q. How long after a person has gone under the water for the last time may a person be resuscitated? A. Possibly not more than five minutes; death sometimes occurs sooner than that.

Q. Is that the limit? A. It is about the limit of any well-authenticated case, I think.

Q. Many of those stains that you have spoken of were ecchymotic stains, — ecchymosis? A. Ecchymosis is not stain; ecchymosis is blood beneath the skin.

Q. Post-mortem stains, — stains found after death? A. Don't you mean post-mortem discoloration?

Q. Yes, I adopt your word. A. There was post-mortem discoloration on the body.

Q. Did you find those at any other place on the body? A. Yes, sir.

Q. Find any around the buttocks? A. On the buttocks they were quite plenty.

Q. About the limbs? A. Yes, sir.

Q. And about the face? A. On the back side of the neck. Post-mortem discolorations occur on the back side of bodies; they are not much seen on the front, usually.

Q. Was the neck frozen? A. It was when I saw it in the woods.

Q. Where was the first place you noticed the abrasion as to the vagina? A. The first place?

Q. Yes; where were you? A. I discovered that after the body had been undressed and laid on the table preparatory to dissection, when a careful inspection was being made of the genital organs.

Q. Now, will you please describe fully the condition of the heart's organs as to blood. A. As to blood?

Q. Yes, sir. A. In the cavities?

Q. In the cavities. A. I discovered no blood in the cavities of the heart excepting in the right auricle, which was distended with dark, venous blood; but before the cavities were opened, the vessels of the heart had been cut through, and the right ventricle could very well have been drained of its blood through the pulmonary canal, as

when I cut the vessels a large quantity of this dark, venous fluid blood flowed out.

Q. Had the walls of the trachea collapsed? A. They had not.

Q. You say that the cartilaginous substance of those two rings, the second and third, were broken asunder? A. They were.

Q. So that each became two parts? A. Yes, sir.

Q. And yet the trachea had not collapsed? A. It had not.

MASON, C. J. We will stop here. The witness may step down.

Recess till 2.30 P.M.

AFTERNOON SESSION.

The court came in at 2.30 P.M.

DR. FRANCIS J. CANEDY — *resumed*.

Q. (by Mr. BEER). Doctor, did you notice the operation of the disrobing of the body? A. I did, and assisted at it.

Q. I think you suggested a query whether the garments were cut or torn in that action? A. I can't say, sir, but that some of them may have been.

Q. You were not taking particular notice? A. I was not, — not enough to answer that question positively.

Q. Did you notice what was on her hands? A. Gloves, — knit gloves.

Q. Anything else? A. Knit gloves.

Q. Was there a ring on her finger? A. I think there was.

Q. What kind of a ring? A. Gold ring, — common ring.

Q. You say that the blood flowing through the vaginal tract was dark, venous blood? A. Yes, sir; dark-colored blood.

Q. And an abundance? A. No great quantity; no, sir; small quantity.

Q. Did it discolor the matter taken from the vagina? A. It did.

Q. Strongly, or weakly, or how? A. Tinged it red, — stained it red.

Q. How much in quantity were the extractions? A. Probably something like a teaspoonful in all.

Q. Did it exhaust the vaginal tract? A. Pretty nearly, I think.

Q. What operation did you employ to find out the contents of the uterus? A. Split the uterus open.

Q. Did you remove the cervical plug? A. I did.

Q. What does that consist of? A. Chiefly mucus.

Q. Phlegm, — something like phlegm? A. Well, something of that nature; you might call it phlegm; mucus, we call it.

Q. You stated that the rings of the trachea were broken on the convex side? A. Yes, sir.

Q. And then you said they were broken right through? A. They were separated into two parts.

Q. Well, they were also, — weren't they, — broken on the concave side also, then? A. No, sir.

Q. How do you explain they were merely broken on the convex side, and yet separated, part of each trachea separated? A. If you take a hoop and break it at one point, you have that broken, don't you?

Q. You say the trachea was broken through? A. The rings of the trachea were broken through their front or anterior convex surface, entirely separate one portion from the other at that point.

Q. So that the ring of the trachea could be laid open straight? A. It could by taking hold of the broken ends and pulling them out.

Q. Does not that involve the rupture of the inner side of the ring? A. What do you mean by the inner side of the ring?

Q. The inner side of the second and third rings of the trachea. A. That involves a rupture of the rings at that point where they are broken.

Q. Not right through? A. Right through.

Q. Yes. Well, how do you explain that the inner side, the concave side, was not broken, then? A. You mean by the concave side the under side of the ring of this convex surface?

Q. Yes. A. If that is what you mean, it was broken. It was broken both at the top and at the bottom of the ring, but not on the back side of the trachea.

Q. Well, perhaps you didn't understand me, doctor. So that you conclude that the ring was broken, both on the convex and concave side? A. Yes, sir; I have stated several times that the rings were completely separated.

Q. Was the blood flowing over the abrasion at the entrance to the vagina? A. It was not; it was flowing from the abrasion.

Q. Was there blood flowing in the vaginal tract at the time of examination? A. Only from this little place where the mucous membrane had been denuded.

Q. How far from the outer surface was the abrasion? A. Near the external part, near the inlet, just at the junction of the vulva with the vagina.

Q. Did you put any instrument upon that to examine? A. I did not.

Q. Did any one under your direction? A. No, sir.

Q. Or in your presence? A. No, sir; it was carefully examined by naked eye inspection.

Q. Finding that the rings of the trachea were broken in the way

that you say, didn't it occur to you that it might be important to preserve the trachea? A. Yes, sir.

Q. Why didn't you preserve it? A. Because I didn't know but this body might be taken up and re-examined, and it would be necessary to have all parts of it there.

Q. Have you taken it up? A. I have not.

Q. Did you attend Mrs. McCloud in her life time, professionally? A. I did.

Q. When? A. Some years before. The last attendance I gave her was before her marriage, I should think.

Q. Do you know of any other physician that she had other than yourself? A. I think Dr. F. H. Drew attended her at times, or her child. I don't know whether he attended her, or not.

Q. Where was he residing at the time? A. At Shelburne Falls.

Q. How recently did he attend her? A. I don't know, sir; I don't know that he attended her at all.

Q. Was he residing at Shelburne Falls at the time of this tragedy? A. No, sir.

Q. How long had he been away from Shelburne Falls? A. A few months; I cannot say just how long; a few months.

Q. He had been a practicing physician in your town? A. Yes, sir.

Q. In your report of the autopsy, you stated only three marks on the left side of the neck, or throat, did you not? A. May I be allowed to consult this report?

Q. Please answer that. Which report?

SHELDON, J. If you inquire as to the contents of the written document, he can inspect the document.

Q. Did you ever state there were only three marks on the left side of the neck? A. I never stated that there were only three. I may have said in my report there were three, for there were three very distinct ones, with the fourth one less distinct.

Q. Didn't you also swear at the preliminary hearing, in the direct, that there were only three? A. I don't think I ever said that there were only three. The notes taken at the time of the autopsy state distinctly that there were four.

Q. Do you remember stating there were only three, and then being recalled, after the cross-examination, and stating there were four? A. I remember stating there were four several times, because there were four.

Q. Did you ever state there were three? A. I think I have said there were three. I think likely in my report to the district attorney I stated there were three that were most distinct and frozen into the neck, while the fourth one was only indistinct, and showed the mark of the nail of the little finger.

Q. At the time of the making of the report, the notes you have referred to, of the autopsy, were made or had, weren't they? A. Yes, sir.

Q. And yet, in view of what you discovered at the autopsy, and having the notes before you, you stated that there were three? A. This report was not made with notes before me, and was not expected to cover everything in this case.

Q. (showing bag). This bag was handed you in the house, you say? A. Yes, sir.

Q. And that was the first time you had seen it? A. The first time.

Q. What was there in the bag at the time? A. I cannot tell definitely all the articles, — the pocket handkerchief, pocket-book and contents of the pocket-book. The pocket-book and its contents was the thing I chiefly interested myself in examining.

Q. Do you remember anything else? A. I don't recall anything now from the bag.

Q. What was the first article handed you? A. A bag was handed to me.

Q. Where did you find the pocket-book? A. In the bag.

Q. What part of the bag? A. The bottom of it, I suppose. I took it out of the bag.

Q. Were there any lemons? A. I don't remember that there were lemons in the bag.

Q. Or oranges? A. I don't remember that.

Re-direct Examination.

Q. (by Mr. HAMMOND). The broken trachea, — to what do you attribute that, as you saw the effect, — to what cause? A. To the pressure.

Q. And pressure of what part? A. To the pressure of the lower part of the hand, this part of the hand, down upon the trachea which fractured the ring.

Q. You have said that the drawers that were removed from her person were here, and whether they were at that time open, as they are now? A. They were; they were open drawers.

Q. Open in the middle? A. Yes, sir.

Q. Whether or not there was any bruise upon the trunk of her body which you have not mentioned? A. Upon the right breast there was a discoloration.

Q. Describe it particularly, if you please. A. About the size of a hand, somewhat irregular in shape, with lines radiating from a central point.

Q. And on which breast? A. On the right breast.

Q. And when did you observe those? A. After the body was stripped and laid on the table, we were inspecting it for a second time.

Q. Whether or not there were any indications of post- or ante-mortem injury? A. There was evidently of ante-mortem.

Q. Whether there was any other mark? A. I think there was a discoloration on the outside of the arm, — right arm; yes, right arm, about midway between the elbow and shoulder.

Mr. HAMMOND. That is all.

Dr. FRANK H. ZABRISKIE — *sworn*.

Q. (by Mr. KNOWLTON). What is your whole name, doctor? A. Frank H. Zabriskie.

Q. You are a physician by profession? A. Yes, sir.

Q. Residing in Greenfield? A. Yes, sir.

Q. How long have you been in practice? A. Eleven years.

Q. And where did you learn your business? A. Physicians and Surgeons, New York City, — in the college.

Q. You had something to do with anatomy, as well as the regular practice of medicine? A. Somewhat.

Q. The examination of dead bodies? A. Yes, sir.

Q. Did you know Mrs. McCloud in her life time? A. I never saw her until the day of the autopsy.

Q. You were sent for to go over there? A. Yes, sir.

Q. When did you get there? A. I got there about 1 o'clock; left here about 12.20.

Q. Where did you see the body? A. In Mr. Crittenden's house, in the parlor.

Q. Whom did you find there? A. Dr. Canedy went with me, and we overtook Mr. Munyan and Mr. Johnson; and there were present, besides Dr. Canedy and myself, Mr. Baker, Mr. Johnson, the undertaker, Mr. Ball and Mr. Munyan.

Q. Who is Mr. Baker? A. The pharmacist at Shelburne Falls.

Q. Who is Mr. Ball? A. A brother-in-law of Mrs. McCloud.

Q. Married her sister? A. Yes, sir.

Q. Where was the body when you saw it? A. The body was lying on a sofa between the two windows on the west side of the room.

Q. Dressed? A. Dressed.

Q. Did you make an examination of it before it was undressed? A. Yes, sir.

Q. Tell exactly and scientifically what you saw, using, if you please, such plain English terms, instead of Latin and medical terms, as you can. A. Yes. The first thing that I noticed about the body was

that the clothing, as it lay on the sofa, was undisturbed and covered her completely, only her feet protruding below her dress. I noticed that the cape was up around her neck. I noticed that there was some froth upon the left side of the cape, about here.

Q. Froth? A. Froth. There was also froth upon the lips, and then we noticed the appearance of the face, and there were minute — the veins were distended of both the lower and upper eyelids, what is technically known as ecchymosis, and also that the lips were exceedingly blue in their color. Then we removed the collar; unhooked it in front, and laid it back, so that we could see the throat; and before looking at the throat closely, at a distance of a yard, certainly, I could see plainly one mark here, and four marks here, three of them faint, the fourth one less distinct, and three nail marks here, and one here, the finger-nail marks being the farthest away from the middle of the indentation.

Q. The four marks are on — A. The four marks are on the left side of the larynx, one mark on the right side. These were indentations pressed right in, and then the nail marks were distinct; they were red, while the others were simply dark impressions.

Q. Go on. A. And I also noticed two scratches here, right under the jaw, above the larynx, just as if I had taken my throat there; and then the deep impression is down here, and here the skin was denuded, the epidermis, the scarf skin. The scarf skin was denuded here and also here, a larger piece on that side than on that side.

Q. That being on the side of the neck? A. No, being about there.

Q. Go on. A. That having been noted, then we examined her clothing as it lay on her body. None of that clothing was torn and hardly any disarranged, but when the skirts were lifted up so as to disclose the legs of the patient enclosed in knit woollen drawers, the blood was seen, — blood stains all around the aperture of the drawers leading to the genitals, and there was a large number of broken leaves between the drawers and the skirt next to them.

Q. Open drawers? A. They were open drawers, — well, yes.

Q. Divided? A. Yes, divided.

Q. Go on. What next did you observe? A. Then the patient was undressed after the condition of the genitals was noted, and it was noticed that the aperture of the vagina was gaping wide open, that there was blood inside of it, and that it was moist about the aperture. Then the clothing was removed.

Q. Was the moisture blood moisture? A. Partly blood and partly mucus. There was enough blood, as I say, to stain the aperture of the drawers. Then the clothing was removed, and the body was carefully examined to see if there were any bruises or marks. There

were no bruises or marks discernible on the body, save about the neck, and the vaginal orifice, except one mark here on the outer side of the right upper arm, and one here on the right breast, covering about one-half of the right breast.

Q. Were those marks ante-mortem or post-mortem? A. I should say ante-mortem.

Q. How do you distinguish? A. They were ordinary black-and-blue marks, whereas the blood found where the blood settled down was of a deeper hue; the other were lighter black-and-blue marks which one sees in life. These were purplish.

Q. Those were distinguishable? A. Those were distinguishable, and the attention of everybody was called to these facts. All the lay witnesses, as well as the medical ones, observed them carefully.

Q. Did you make any further external observation before proceeding to the autopsy? A. I had Mr. Johnson get me four butter plates from the kitchen, and they were brought in, and then with a spoon I removed the contents of the vagina. It was also noticed in taking away the contents of the vagina that the genital hairs were pushed in against the walls of the vagina, from their normal situation, and there were also some loose hairs in the vagina which were of the same appearance and of the same general character, curly, as those on the lips of the vulva. There were also some leaves in the canal.

Q. How far in? A. Two inches.

Q. How far were the hairs? A. The hairs were not so far; I should say within an inch of the aperture. And then, with a spoon, the blood from the vagina, from the lower part, was taken out, then from the middle zone it was removed; and we noticed as we went higher up it became lighter in color, and finally the blood in the upper zone was removed, and that was noticed to be lighter in character, and of the appearance and consistency of semen. That was put in saucer No. 1, and then later, when the uterus was cut open, a plug of cervical mucus, the mucus in the neck of the womb, was removed and placed in saucer No. 4.

Q. Any other external observations? A. There was noticed a severe abrasion on either side of the entrance to the vagina, just within the labia minora, — the small lips of the vulva.

Q. The skin broken? A. No; the mucous membrane was abraded.

Q. Would that draw blood? A. That would draw blood.

Q. Had that drawn blood? A. Blood had been drawn there. The contents of the vagina were somewhat like blood in character, but somewhat lighter, because it had been excluded from the air.

Q. Did that conclude the examination? A. That concluded the examination.

Q. Then you were present at the autopsy? A. Dr. Canedy per-

formed the operation, and I held the flaps back and sponged the blood off.

Q. I will ask you to describe those things which you found significant, and then I will ask you if there were any others? A. The cricoid cartilage was at the back of it, the back part of it, pushed up above the thyroid cartilage.

Q. What is that? A. The upper part is called the thyroid, because it is a shield, and the cricoid cartilage is below, here, just about on a level with the fifth cervical vertebrae; then the trachea begins and passes down into the chest, and as I say, the lower part of the trachea was found pushed up over the upper cartilage, and also the second and third tracheal rings were found cracked at a point about the point of the greatest convexity.

Q. The windpipe consists of a series of rings? A. Consists of a series of rings between two layers of cartilaginous membrane.

Q. Pretty stiff? A. They become more stiff as one grows older. They are very yielding in the young.

Q. She was thirty-six. Are they hardened at that time? A. They were somewhat hardened.

Q. And then above them are what would amount to shorter rings? A. The cricoid cartilage is a complete ring. It is shaped like a seal ring, with the seal behind, and the thicker portion behind, and the thinner portion before. The cricoid cartilage is here, and here the thyroid, and here we find what is called the Adam's apple.

Q. And that was pushed up? A. The lower one was pushed up under the upper one.

Q. How many trachea rings were broken? A. Two.

Q. The two upper ones? A. The second and third.

Q. One was not broken? A. As I remember it; yes, sir.

Q. Was there anything else you observed there? A. I observed that there was enormous congestion of the veins of the neck; when Dr. Canedy made the incision on the median line down through there, they bled very profusely, — a black, tarry liquid blood, no clots discernible.

Q. Well, go on. A. Then, that being examined and noted, and every one of the witnesses' attention called to those tracheal rings, the same as everything else connected with the autopsy and the examination, then we proceeded to make the incision from the sternum, clear down to the pubes, and then the skin and superficial faciae, the membrane on it —

Q. I won't trouble you with the details, — Dr. Canedy has told that. What did you find that was significant? A. The cavity of the chest was opened, and the lungs were found tremendously engorged with dark blood. The general appearance of the lungs and heart was

healthy. The cavity of the right auricle was full. The cavity of the right ventricle was empty, but that may have been done through the leakage of the pulmonary vessel when the heart was incised, so it could be laid open for examination. The left side of the heart was entirely empty. Then we examined the abdominal organs, and found all of them in a healthy condition.

Q. I won't bother you with those you found in a healthy condition. The stomach, however, I will ask you to state what you found about that. A. We found about a couple of ounces of fluid in the stomach, chyme, grayish-yellow in character, and with no particles of food remaining, all liquefied, showing it had been several hours after a meal.

Q. Now, the genital organs, did you examine them, too? A. The uterus was found in a perfectly normal condition. The woman was not having her monthly sickness at the time, as was shown by the condition of the uterus, so that any blood from that source could be excluded. The ovaries and the fallopian tubes were found healthy. The bladder was found to be empty.

Q. Now, doctor, did you find any other impairment or abnormality of any of the vital organs? A. Then the brain was examined, and the sinuses of the brain and veins of the brain and of the pia-mater, the membrane covering of the brain, were found to be enormously engorged with dark, almost black, blood.

Q. Was there any other thing that you found significant in the condition of the body? A. No.

Q. Now, what did you do with the little plates of matter that you removed? A. The little plates of matter were taken down to Greenfield, as we had not time to do any work up there. It was then about 5 o'clock in the afternoon. I took a train that leaves there somewhere in the neighborhood of 5 o'clock, — 4.50, or something like that. And Mr. Wells and I examined them together, examining and keeping portions separate, and making slides from each portion, and going over them carefully; and from the lower zone, in saucer No. 1, we found simply blood and a large lot of what is known as vaginal pavement, epithelium, — that is, it is little cells that line the surface of the mucous membrane of the vagina; and there were a large number of those, which would only confirm the fact that there was severe abrasion there, just as if you scraped the shingles off the roof, — the same principle.

Q. That was the outside taking? A. Yes, sir, and in that were found no spermatozoa.

Q. That is, no trace of semen? A. No trace of semen. And then in the second zone no traces of semen, but up in the upper portion, there we found spermatozoa in great abundance, — on one slide, no less than twelve spermatozoa.

Q. And then there was still a fourth? A. The fourth was absolutely devoid of spermatozoa, because there was the plug filling the mouth of the womb, and the woman died so soon after connection that there was no chance for them to get up there.

Q. Now, are there any other significant facts to which I have not called your attention, doctor, that you recall? A. It was significant that there were no bruises found on any part of the body except above there.

Q. Well, I may call your attention to that as a reason for some other questions; but no other existing facts were found? A. No, sir.

Q. What did you find to be the cause of death? A. Strangulation.

Q. And tell all the reasons that led you to that conclusion. A. In the first place, the marks of violence on the throat, which were unusually distinct, so that no one could fail to see that there were the prints of a man's hand. The men there who were not doctors saw it just as plainly as we who were. And, in addition to that, all the symptoms internally pointed to it. There were no clots in the heart. The left side of the heart was empty, and a portion of the right side of the heart —

Q. Before you get to that, just how was the man's hand applied? Just take my throat. [Witness illustrates.]

Mr. BEER. What was your question?

Mr. KNOWLTON. To illustrate on me.

Q. Go on with your reasons. A. Then the enormous engorgement of the lungs, which could have been produced in no other way, associated with the emptiness of the heart's cavity on the left side, the lividity of the lips, the froth on the lips, which had, some of it, spilled down on the cape. Then the absence of any other appreciable reason for death.

Q. And how conclusively did these reasons that you have mentioned lead to strangulation as the cause of death? A. They led absolutely to it; cannot escape the conclusion, putting them all together, accumulative.

Q. The result of strangulation is to stop the flow of air into the lungs? A. Stop the access of air into the lungs, and then the carbonic dioxide in the blood affects the medulla oblongata at the base of the brain, and that turns off the heart, and the heart has to stop.

Q. The air doesn't get to the lungs, and the dark blood does not change to light blood? A. It does not change the blood, and the person is poisoned with carbonic dioxide.

Q. Well, that is the reason you found such a large quantity of dark blood in the brain and lungs and other places? A. The only blood that wasn't dark in her body was down in the vagina, and that was not strictly arterial.

Q. Is it the left side that pumps the dark blood? A. It is the right side of the heart that pumps the dark blood from the veins. Then it is received in the left auricle, and from there into the left ventricle, and from there out through the aorta through the whole body.

Q. I am afraid the mechanics are too much for me. You found the condition of the heart as you would expect to find it in case of strangulation? A. Yes, sir.

Q. What, in your opinion, caused the breaking of the trachea? A. Pressure.

Q. Assuming that it was a man's hand, fingers, that made the marks found upon the throat, would the same fingers make the breakage of the trachea? A. They would contribute to it, but the heel of the hand would come right down; a man doesn't take it just that way; he would push up.

Q. Assuming that the fingers made the marks? A. Yes, sir.

Q. What you saw on the upper part of the throat, was the breaking of the trachea where the heel, as you call it, the front of the wrist, would be apt to come in such a case? A. That would come just about down on the trachea, because the finger tips were on the other side of the larynx, up here.

Q. How long does it take to kill a person under the circumstances found in this case? A. Might have been killed in less than two minutes; the shock, the fright, partly contributing.

Q. The time is not definite, necessarily? A. The time is not definite.

Q. How soon would a person become unconscious? A. Oh, she would be unconscious about at once; at the same time, she might be anywhere from two minutes to five minutes; might be anywhere from two minutes to five minutes dying.

Q. Of course you had no better opinion about the cause of the marks on the breast and arm than any other man would have? A. No, sir.

Q. External violence? A. External violence.

Q. Before death? A. Before death.

Q. And that is all you know? Did you form any opinion as to whether carnal intercourse had been had with her? A. I am positive it was had with her.

Q. What are your reasons for that? A. In the first place, the genital hairs being pushed in from the labia, into the canal; the violent abrasion done to the canal, and the presence of spermatozoa in the upper part of the canal, prove that absolutely. That is set down in all the medical works as absolute, distinctive proof. You might have spermatozoa absent, and yet have strong proof; but with spermatozoa present, you have absolute proof.

Q. Could you form any opinion as to whether that carnal intercourse was voluntary, or by force? A. By force, owing to the violence used and the way the hairs were pushed in here, shows clearly to my mind the passage was forced.

Q. Would the abrasions show anything in connection with that? A. The abrasions would, because violent intercourse would be likely to produce abrasions.

Q. Was there anything to indicate as to what time that intercourse was had, relative to her death? A. At or very near the time of the death, — might have been shortly after. My personal opinion is, that it was after she was dead.

Q. Why do you limit the time of intercourse to near the time of the death? A. Well, the blood flowing there so freely.

Q. Where did you find that blood came from flowing there? A. Came from the walls of the vagina, when scratched.

Q. Not from the uterus? A. No, sir; not from the uterus. The uterus was empty and clean.

Q. Was the blood near the outside? A. Yes, sir. The patient lying on her back, some blood gravitated down into the vagina.

Q. You say there were no monthly course going on? A. No, sir; that is positive.

Q. Could you tell anything about the age of the bruises on the breast and arms? A. They were recent, because they had not gone on. I don't know whether they were produced that day, or not. They were recent, — probably produced within twenty-four hours; more than that I cannot say positively.

Q. You say they had been produced more than twenty-four hours? A. I don't think more than twenty-four hours.

Q. Was the body frozen when you found it? A. It was partly thawed when I saw it, because there had been a fire in the room about an hour.

Q. Assume the body had been found in the woods and brought to the house (which of course you don't know), and been there an hour before you came. Taking that fact in connection with what you found, could you say anything about the time of the death? A. The time of the death was several hours previous, because the body was pretty stiffly frozen, even after there had been a fire in the room. There was only a very slight relaxation then.

Q. But there were no medical facts in relation to the time of the death that gave you any aid? A. No.

Q. You began to say, and I didn't let you finish, what the stomach and contents indicated as to food. A. Indicated that it had been at least four or five hours since a meal.

Q. That was the last stage of digestion? A. Yes, sir; the last stage of stomach digestion.

Cross-examination.

Q. (by Mr. BEER). Had you ever seen the subject alive, doctor?
A. No, sir.

Q. About how heavy was she? A. I should estimate about a hundred and fifty pounds.

Q. Flethy? A. Quite fleshy; well nourished.

Q. You took the contents extracted from the vagina to Greenfield yourself? A. Yes, sir.

Q. You exhausted the vaginal tract, as I understand? A. Practically; yes.

Q. How much in all was there extracted? A. Oh, from the vagina itself as much as perhaps two teaspoonsful in all, including the semen found in the upper part.

Q. How much in each saucer? A. In saucer No. 1, about half a teaspoonful; about the same in No. 2; and in No. 3, fully a teaspoonful of blood and semen.

Q. Was that the first thing that was done by you to the body?
A. Yes, — well, otherwise than helping remove the clothing. That was the first thing in the way of autopsy. I took the measurements about the throat, under Dr. Canedy's direction.

Q. Was there any of the clothing cut or torn in removal? A. No, sir; not that I know of.

Q. How about the under garments, were they? A. No, sir; they were removed just as I say. She had a pair of knit gray wool drawers, which were bloody around the orifice.

Q. I say about their removal, not condition. A. They were removed without any tearing or cutting.

Q. Was the shirt taken off without cutting or tearing? A. I think so; I should not swear to that, though.

Q. And the underskirt? A. Oh, they were all taken off without any tearing or cutting; I know that. I am not positive about the undershirt.

Q. You testified in the preliminary hearing, didn't you? A. I believe I did; yes, sir.

Q. You were asked whether there was any bloody matter in the contents of saucer No. 3? A. There was some there.

Q. Did you use any process to eliminate that blood? A. I did not need to.

Q. Well, did you? A. No, sir; I did not.

Q. Did you see the leaf taken from the vagina? A. Yes, sir.

Q. By what means? A. Finger.

Q. And you made the extraction after that had been done? A. I think I removed the leaf; possibly Dr. Canedy did; I don't remember.

Q. Were you in the room when Dr. Canedy testified here to-day? A. I don't know whether I was when the leaf topic came up.

Q. You heard him testify in the district court, didn't you? A. I think I did; I was there. I don't know everything he said.

Q. You remember his saying there that he removed the leaf by means of his finger?

MR. KNOWLTON. You refer to the district court?

MR. BEER. Yes.

SHELDON, J. Is that at variance with his testimony here?

THE WITNESS. It was removed with the finger. I don't know whether the doctor did it, or I.

MR. BEER. The witness says that he removed it.

SHELDON, J. He don't remember whether Dr. Canedy said he did or not.

Q. (by MR. BEER). Who removed the leaf, you or Dr. Canedy? A. I don't know; I don't remember. It is immaterial.

Q. Had there been any incision made at the time of using the spoon? A. No, sir.

Q. Any measurements made? A. Yes, sir; measurements around the throat.

Q. When was the microscopical examination made? A. It was begun the Saturday night that I got down here, and it was continued until Wednesday.

Q. How long did it take you to do it? A. I would have to work at different times during the day; could not work continuously; had my other business to attend to. Mr. Wells and I worked alternately at it.

Q. Worked separately? A. Whenever we struck any slide, we would see it together. I would notify him, or he would notify me.

Q. Where was the matter kept? A. Kept in Mr. Wells's drug store, right here.

Q. Did you deliver it to him on Saturday? A. I delivered it to him on Saturday night. We began work in my office, and I said, "You take it, and notify me as soon as you discover anything," and he did.

Q. The body was frozen solid when you extracted it? A. Certainly.

Q. Though there was a fire in the room? A. Yes, sir; a fire in the room in a wood stove.

Q. What did you find in saucer No. 1? A. In saucer No. 1 I

found what is known as the epithelium, — little cells which line the vagina, where they cover the surface of the lining membrane of the vagina. I found a large number of red corpuscles and white blood corpuscles. That was all I found.

Q. Was there any thread-like appearance to the epithelium? A. The epithelium under the microscope looks transparent, white, like window glass, only you can see the nucleus and nucleolus in the ordinary wall.

Q. How did you prepare the slide? A. The contents of the saucers were moistened with a solution of sulphate of soda, about five or ten per cent.

Q. Use any cloth? A. No, sir; didn't need to. Put a little of this to one side of the saucer, moistened it up, and transferred it with dropper to tube on the glasses.

Q. Before putting it on the saucers, did you wipe the saucers? A. The saucers were perfectly clean before anything was put into them.

Q. Were they handed to you? A. They were handed to me, and I saw they were perfectly clean when handed to me. There was no dirt on them at all.

Q. Was there any movement in any article that you carried away, discernible under the microscope? A. No, sir; they cannot live under those conditions; the cold kills them.

Q. Was there a well-shaped head? A. Yes, sir; well-defined head, nucleus to that, and cordal filament, tail, head discernible.

Q. Sure it was not shred? A. I know it was not. I saw too many of them. I am sure it was not; sure it was that.

Q. Was there a granular appearance to the head? A. No, sir; there was nucleus and nucleolus. That is somewhat clear, same as epithelial cells.

Q. When did you examine saucer No. 3? A. That was examined on Monday and Tuesday. We examined them before that, but first found the spermatozoa on Monday. Monday and Tuesday found abundant spermatozoa there.

Q. Did you find anything — did you find spermatozoa in saucer either 1 or 2? A. No.

Q. Or No. 4? A. No, sir.

Q. Did you take anything away from the body and clothing except the contents of the saucers? A. No, sir; I did not. It was not necessary.

Q. The epithelial cells are thrown off, discarded? A. Yes, sir. There are some always to be found there, but there was an unusual number of them.

Q. New ones being formed? A. There was some of that, but

an unusually large number of them, more than under ordinary conditions.

Q. Did you find some of those? A. Some may have been thrown out that way, but they were disproportionately abundant.

Q. Could you tell whether they were old or new? A. No; I couldn't tell you.

Q. You say that the epithelium is transparent? A. Yes, sir.

Q. And spermatozoa are transparent? A. Yes, under the microscope.

Q. Can you discover spermatozoa without the aid of the microscope? A. No, sir; you cannot. Spermatozoa were found in saucer No. 3, where the gross appearance corresponded most closely to that of semen.

Q. Doctor, I will ask you, were there any marks about the throat other than those you have described? A. From the back?

Q. That is not the throat. A. On the front of the throat only those I have described, — two here [indicating], and then the prints of the thumb on the right of the larynx, the print of the four fingers on the left of the larynx. Those are all the marks, I remember, to be seen before we cut into the body.

Q. Until Tuesday, I understand you to say, you found no spermatozoa in saucer No. 3? A. No, sir; you often have to help in that way.

Q. I am not asking anything else but this individual matter. A. I say yes, Tuesday. Mr. Wells and I both saw them, on Tuesday. They were very abundant. That was the first time we found them.

Q. The saucer had been out of your sight until that day? A. It was in trusty hands; it was out of my sight.

Q. By what means did you carry those saucers? A. Carried them down in a mahogany box, in a case I had with me.

Q. Anything over them? A. Yes, sir; covered up tight; jointed box.

Q. What was the height of the person? A. Oh, I should say about five feet four, five or six inches.

Q. The neck a long neck or a short neck? A. Medium length. Nothing noticeable about it in one way or another. Very well formed neck. that is all I noticed. Not particularly short, or particularly long neck.

Q. Did you say that these marks were the prints of a man's hand? A. Yes, sir; because every one of the witnesses present took hold of them, and their fingers fitted right in, so they corresponded.

Q. Every one's hands fitted in? A. I mean roughly, approximately. Every one took hold, to feel the depressions manifest to the eye, to feel them with the finger.

Q. Did you make any incisions at all yourself? A. I believe not; I think Dr. Canedy did all that.

Q. As to the marks on the arm and the breast, can you say they were not there before the day before you had the autopsy? A. No, sir; I can't say. I don't know.

WILFRED S. BALL—*sworn*.

Q. (by Mr. HAMMOND). Your full name, Mr. Ball? A. Wilfred S. Ball.

Q. Where do you live? A. Shelburne Falls.

Q. What is your age? A. Thirty-four.

Q. Whether or not you are connected by marriage with the deceased, Hattie E. McCloud? A. I am.

Q. How? A. She was my wife's sister.

Q. Whether or not you were present at the time of the autopsy, or on the day before, in the village? A. I was present in the village the day before. I was present at the autopsy also.

Q. When first did you learn of the fact of her death? A. I learned of the fact about 9.30 Saturday morning.

Q. Where were you at that time? A. Was at the office of the Lamson-Goodnow Manufacturing Company.

Q. Whether or not you went to the place? A. I went immediately to the house of Mr. Crittenden.

Q. Before going into the details of your observation, let us ask you what was the age of Mrs. McCloud? A. She was thirty-seven, I believe.

Q. Whether or not she was married, or a widow? A. She was a widow.

Q. How long had she been a widow? A. About eight years.

Q. Had she a child? A. She had.

Q. The name? A. Named Alberta.

Q. The child's age? A. I think ten years, or nine.

Q. About what was the height of Mrs. McCloud? A. I should presume five feet six inches or seven.

Q. About what was her weight? A. Perhaps one hundred and sixty-five pounds.

Q. And what was her general health? A. General health was pretty good.

Q. What was her health at the time immediately before her death? A. Her health had been good for a long time, — very good, so far as I know.

Q. And where did she live? A. She lived in the house adjacent to the house of Mr. Crittenden.

Q. Her daughter with her? A. Yes, sir.

Q. Whether or not there were intimate relations between the two houses day by day? A. There were.

Q. Whether or not she had any employment? A. Well, she had no particular employment. She had had boarders. She was teaching music to some extent.

Q. Speaking of teaching music, for how long had she followed that, more or less? [Objected to as immaterial.]

Q. How long a time previous to her death was it that you had seen her last? A. I cannot state exactly how long it had been; possibly a week.

Q. Resuming the statement of your doings on Saturday, you say you went to the house? A. Yes, sir.

Q. Of Mr. Crittenden? A. Yes, sir.

Q. What did you see there? A. I first saw Mr. Crittenden and Mrs. Crittenden. After talking with them, I started to go back down to the village. I stepped into the room where Mrs. McCloud lay, and saw her before going down.

Q. And at the time of that first view, how long did you remain in the room? A. Well, in the neighborhood of one or two minutes, possibly. Just long enough to glance.

Q. Did you make any particular observation at that time? A. I did not.

Q. Did you go away from the house and return again? A. I did.

Q. At what time did you return? A. I returned in the neighborhood of a quarter-past 1.

Q. Who were present at that time? A. Mr. Baker, I think, walked up the hill with me, and we found at the house Mr. Johnson the undertaker, and I think he was the only person at the house, aside from the family, when I reached there.

Q. What time did the doctors arrive? A. They arrived shortly afterwards.

Q. Whether or not you were present at the autopsy? A. I was.

Q. Take any part in it? A. I took notes.

Q. Whether or not the notes that Dr. Canedy had here were written in your hand? A. I presume they were; I have not seen them.

Q. Were you present during all the autopsy? A. I was present during the entire autopsy.

Q. Whether or not you observed the condition of the body of Mrs. McCloud, and observed what was done? A. I did; yes, sir.

Q. Will you state to the jury what you observed with reference to the appearances before the garments were removed? A. The body, as it lay on the lounge at the time, appeared undisturbed. When the outer garments were removed, we found there were leaves, etc., between the outer and inner garments.

Q. Whether you observed anything further about the genital organs?
A. No, I don't remember that I did.

Q. Whether you observed any appearance of blood? A. No, I don't remember; I think there were. Yes, there were a few small blood spots, if I remember correctly.

Q. Whether or not you observed the examination of the throat?
A. Yes, sir.

Q. State what you observed? A. I observed that there were marks on the throat, on both sides of the throat, as though made with the thumb and fingers, — black marks.

Q. Describe their location as exactly as you can to the jury. A. There was a mark on the right side of the throat, about in this position [indicating], a large mark on the other side, two distinct marks, also one other mark which was not quite so distinct, as though made by pressure in that manner [indicating]. The blood had settled under these marks, making it very plain and visible.

Q. Whether or not you observed any marks in the places where a nail might come against the skin? A. There were such marks.

Q. Describe such marks. A. I cannot describe them exactly, any more than they had the appearance of a nail sticking into the flesh.

Q. Did you observe any abrasion under the chin? A. There was.

Q. Describe it. A. I cannot locate it exactly, but I think, if I am not mistaken, it was on the right side, about in this position [showing].

Q. About how far from the central point of the chin? A. Perhaps an inch from the central point, although I am not positive on that point.

Q. Were you present when the garments were removed from the person? A. I was.

Q. And did you know what clothing Mrs. McCloud was accustomed to wear? A. I knew what clothing she wore occasionally. I was not in the habit of seeing her oftener than once in a week or two weeks, sometimes longer.

Q. Can you say with reference to the hat you see here as to whose hat that was? A. No, I could not swear that that was her hat.

Mr. KNOWLTON. We won't offer any cumulative evidence.

Q. (by Mr. HAMMOND). Were you present when the clothing was removed? A. I was.

Q. Were you present when the autopsy was made? A. I was.

Q. Did you observe as to the condition of the neck as it was opened? A. I did.

Q. Describe what you observed. A. As the incision was made, and the skin turned back, the blood was clotted in those places which

showed through the skin, and the tube itself was broken. Two of the rings were broken.

Q. Did you observe the condition of the lungs as they were exposed? A. I did not. I had seen about all I was able to stand at that time, and the first of the examination is not so clear to me as it would have been to any other person, perhaps.

Q. Notes were taken down? A. The notes were taken, yes.

Q. And Mr. — who was the undertaker who was present? A. Mr. Johnson was present.

Q. Who else? A. Mr. Baker was present.

Q. Mr. Munyan? A. Mr. Munyan; yes, sir.

Cross-examination.

Q. (by Mr. BEER). Did you visit Mrs. McCloud during her lifetime at her home? A. Had I ever done so?

Q. Had you done so often, frequently? A. Well, occasionally; whenever I was up on the hill visiting at all, I visited her usually.

Q. How far did you live from her? A. Well, I presume it is in the neighborhood of a mile, though I never measured it.

Q. How far from the Shelburne Falls side of the bridge do you live? A. Well, I live on the other side of the village, farther than from the bridge.

Q. On the Shelburne Falls side? A. On the Shelburne Falls side.

Q. About how far after you get into the Shelburne Falls side do you live? A. Well, possibly three-eighths of a mile.

Q. Were you at home the night of the eighth of January? A. I was.

Q. Did you see her? A. I did not.

Q. Were you at home all the time? A. I was at home all the time after 5 o'clock.

Q. When was the last time that you had been to Mrs. McCloud's before her death? A. I am unable to say.

Q. About? A. Well, that is just as difficult, for the reason I don't remember the last time I was there. I was there occasionally.

Q. I thought you might be able to approximate. A. No, I cannot do so. I presume I had been there within three weeks; possibly within two weeks.

Q. Did you ever know of her having dizzy spells? A. I have heard that she had had them; yes, sir.

Q. Recently? A. No.

Q. When did you hear that she had dizzy spells? A. The last time, and I don't know but the first time, that I ever knew of her having a spell of that nature —

Q. You were informed of that? A. I was informed of it. That was all; I never —

Mr. HAMMOND. Let him finish his answer.

THE WITNESS. I was about to say that the last, and perhaps the only, time that I ever knew of her having those spells was probably at least a year ago, at least a year before she was murdered, which would be a year and a half ago.

Q. Were you present at the time when she had the attack? A. I was not.

Q. What was the nature of the attack? A. I can't tell you.

Q. What? A. I don't know.

Q. Were you informed about it? A. Well, my remembrance of it is that it was something of the nature of an hysterical attack. I can give no definite information in regard to it.

Q. Did you get information from herself? A. No.

Q. From her physician? A. No.

Q. From whom? A. From my wife, I presume; I cannot tell exactly.

Q. Are you sure that there were blood spots, — I am now returning to the time of the autopsy. A. Yes.

Q. Are you sure there were blood spots? A. Yes, I am sure.

Q. Where were they? A. I think they were on the underclothes.

Q. Was that the only blood you saw? A. It was all that I remember seeing.

Q. You hesitated in saying that there were blood spots in your direct. Are you certain that there were any? A. I do feel certain now; yes, sir.

Q. How many were there? A. I cannot say exactly; my impression is there were perhaps three.

Q. Merely on the clothing? A. As I remember it.

Q. Have you seen the clothing since? A. I have not.

Q. How large spots were they? A. I should presume they were in the neighborhood of a quarter to half an inch in diameter, possibly.

Q. Did you see anything peculiar about the private parts? A. I saw a tear.

Q. Did you see it through a glass? A. I did not.

Q. Where was the tear? A. It was at the lower part of the vagina.

Q. How large a tear? A. Well, I should presume half an inch long.

Q. Did you measure it? A. I did not.

Q. Did you see it measured? A. No.

Q. How wide was it? A. I can't state as to that.

Q. How far up into the canal was it? A. I simply glanced at it, that was all. I cannot answer the question.

Q. Did you charge your memory with any one particular about it? A. No; in fact, as I did not expect —

Q. That answers the purpose if you say no. A. Yes.

Q. Did you see anything else peculiar about the genital parts? A. Not about the parts themselves, I think.

Q. Did you examine the other parts of the body after it was undressed? A. I saw —

Q. Did you examine? Please answer yes or no. A. I did not examine particularly.

EDWIN BAKER — *sworn*.

Q. (by Mr. HAMMOND). Your name is Edwin Baker? A. Yes, sir.

Q. Where do you live? A. Shelburne Falls.

Q. Which side? A. Shelburne.

Q. What is your business? A. Pharmacist.

Q. Whether or not you were called to be present at the autopsy on the body of Hattie E. McCloud? A. I was.

Q. And what time were you at the house of Mr. Crittenden? A. About 2 o'clock.

Q. Who were the others present? A. Dr. Canedy, medical examiner, Dr. Zabriskie, Detective Munyan and Mr. Johnson the undertaker, W. S. Ball and myself.

Q. Whether you made observations before the clothing was removed? A. I did.

Q. Will you state whether or not you observed anything about the body? A. I observed certain marks.

Q. Will you describe these marks to the jury? A. There were four marks on the left side of the throat, one mark on the right side of the throat.

Q. Will you indicate their position with your own hand? A. As if grasped in this manner [showing] with the four fingers and the thumb. There was a mark also on the right side, about this position [showing], I should say.

Q. Say what position, so it may be noted. From the jaw to the right of the chin? A. Yes, sir. A scratch, I should think it was, with a nail on the right side, and about this position [showing] was a scratch, chipped out, I should say with a nail.

Q. Any other marks, imprints of fingers? A. The four made by the four fingers and that with the thumb, — of course those were distinct. The one, the fourth one which I judge was made with the little finger, was less distinct, but it was discernible. They were marks, to my mind, indicating that the throat had been clutched more than once. [Objected to.]

SHELDON, J. That does not seem to be competent.

Q. (by Mr. HAMMOND). Whether or not you made any examination of those marks with a touch of your finger? A. I did not touch the body.

Q. Did you observe the condition of the other parts of the body before it was undressed? A. There was a mark on the ear and a scratch on the temple.

Q. Whether or not the abrasion on the private parts was noticed before the clothing was removed? A. It was. The clothing was drawn back as the body lay on the couch.

Q. State what you observed then? A. I observed the external genital organs, that they were somewhat swollen; they were gaping open; there were pieces of hair pushed into the vagina; there was also on the left side, the left part of the vagina, perhaps a half inch inward and perhaps not, an abrasion perhaps more than that, perhaps less, but it appeared in a lacerated condition.

Q. Whether or not there was any other appearance resulting from laceration apparently? A. There was blood visible, also on the drawers. They were soiled from the exudation.

Q. Did you remain present during all the examination made by the doctors? A. I did.

Q. I will ask you, in the removal of the clothing, whether you recall whether it was removed, or whether some parts were cut? A. I think parts were cut.

Q. Did you observe the condition of the lungs, or were you not able to judge about that? A. I observed them, but I did not consider myself able to judge of their condition.

Q. Did you stand by and observe as the abdominal cavity was opened? A. I did.

Q. Whether you remained all through the autopsy? A. I did.

Q. Did you observe, so that you can state, if you would, whether anything was taken out from the vagina, and preserved? You may state about that. A. I didn't observe what was taken out by Dr. Zabriskie.

Q. Will you state what he did, as far as you as a layman could observe, and describe it? A. He called for a spoon, and for saucers, — butter saucers.

Q. Now, what did he do? A. He introduced the spoon into the vagina perhaps an inch or so, and removed it. The first portion removed, whatever it might be, was deposited on the saucer or plate. He then introduced the spoon further, and took out matter, and put that on the third plate.

Q. Could you describe what was removed in any way, what your own eyes observed? A. It was mucous-like matter, and contained more or less blood.

Cross-examination.

Q. (by Mr. BEER). Were there only three saucers used? A. There were four used.

Q. And you noticed all the matter that was extracted? A. Yes, sir.

Q. Did you notice any bloody matter? A. Yes, sir.

Q. And in all the saucers? A. In the fourth saucer I think there was not bloody matter.

Q. But in the first, second and third there was bloody matter? A. I should say so.

Q. Distinctly bloody matter, was it? A. Well, it was mucous-like matter. It did not look like pure blood; there was some blood in it. I think there was less in the third than the first two.

WILLIAM A. JOHNSON — *sworn.*

Q. (by Mr. HAMMOND). Your full name? A. William A. Johnson.

Q. What is your business? A. Undertaker.

Q. Where? A. Shelburne Falls.

Q. Which side do you live? A. Shelburne side.

Q. Whether or not you were called to attend to the body of Mrs. McCloud? A. I was.

Q. What time did the examination begin, as nearly as you can state? A. I should say it was very nearly 2 o'clock.

Q. Whether or not you observed the condition of the body before the clothing were removed? A. I did.

Q. Will you describe anything you saw with reference to the neck of the deceased? A. Why, there were marks about the neck.

Q. Describe them to the jury fully, and illustrate them, if you will, with your own hand. A. I should say to grapple your throat about in that manner [showing], and when you should take your hand away from the throat it would leave finger marks and thumb.

Q. Whether you observed those marks by touching them with your hand? A. I did.

Q. Whether there were any marks of the nails? A. There were marks on either side of the fingers and also of the thumb.

Q. Any other mark? A. One on the right arm.

Q. Any other about the neck or face, that you recall? A. I don't think that I saw any other mark.

Q. At any later time did you observe the condition of the windpipe? A. I did.

Q. State that. A. The windpipe, I should say, was burst about middle way, from five-eighths to three-quarters of an inch, something like that.

Q. Did you notice any other part of her person that was examined before it was disrobed? A. I did not.

Q. Were you there present and observing when the skirt was drawn up? A. I was.

Q. What did you observe there? A. It seemed to be disarranged somewhat.

Q. Go on and state all that you saw. A. The clothing seemed to be disarranged somewhat; the clothing seemed to be soiled a trifle.

Q. With reference to any foreign matter? A. There was just a little on the outside.

Q. Well? A. Well, it was a bloody substance.

Q. Were you present when the cavity of the chest was opened? A. I was.

Q. And the abdomen? A. I was.

Q. Did you remain all through the examination? A. I did.

Q. Had you anything to do with taking off the clothing? A. I took it off mostly myself.

Q. State how it was done. A. Well, it was partly cut and partly torn off. The body was frozen. It was almost an impossibility to get it off without tearing it.

Q. Was there any part of the clothing torn or cut before you began the work of undressing her? A. I could not tell.

Q. Was there any part of the clothing wanting at the time you began to undress the body, — any part of the ordinary clothing of a woman? A. Not that I know of; no, sir.

Q. Fully dressed? A. Fully dressed.

Mr. HAMMOND. I think that is all.

Mr. BEER. I have no questions to ask the witness.

ERWIN T. MALLORY — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. Erwin T. Mallory.

Q. Where do you live? A. Shelburne Falls, Buckland side.

Q. What is your business? A. Farmer.

Q. How are you occupied, or how were you on the morning of Saturday, January 9? A. Well, I went up in my wood chopping that morning.

Q. Can you turn to the plan behind you and tell about where that place is located? Can you place your hand on Ashfield Street, coming down by your right hand there? A. Yes, sir; that is Ashfield Street.

Q. Now, will you run your hand along up the valley road toward Mr. Kendrick's house, run your hand along up to Kendrick's house.

A. That is there.

Q. Now, will you run your hand up along towards the Crittenden

house. Now, do you get the locality? A. Well, I was off down in that way somewhere.

Q. Which way from the Morrissey house? A. I was just about nearly south, a southerly direction, I should say.

Q. And about how far from the place where the body of Mrs. McCloud was found? A. I should say from twenty to twenty-five rods.

Q. Did you have knowledge of anything that occurred on this Saturday morning, and, if so, state what first came to your attention. A. I just got there and began to work, and I heard cries and moans up in the woods.

Q. Speak a little louder, if you can. A. I say I just got there and commenced to work, and I heard moaning and crying in the woods, and I stood and listened a spell; didn't know what to make of it, whether or no it was some boys or some one in distress. And just then Edward Morrissey came up and said Mr. Peters had just gone down by the house on the run.

Q. You had some information brought to you? A. Yes.

Q. Now, was there any other person with you besides Morrissey? A. My son.

Q. What is his name? A. Frank E. Mallory.

Q. What did you or any or all of you do then, on the information coming to you? A. We started and went right up there.

Q. And what did you find on reaching the spot in question? A. Well, I got up there, and the first that I saw, I saw Mr. Crittenden sitting on the ground, and I noticed there was something in front of him on the ground, but I didn't know what it was. I was looking right at him; I didn't see anything till I got within about ten feet of him, and dropped my eyes, and I saw his daughter lying there.

Q. Whether or not you knew Mrs. McCloud so that you recognized her body? A. I did.

Q. Now, describe to the jury as nearly as you can the position of the body. A. Well, the head was lying towards the road, lying on her back, and her arms were by her side, as near as I can remember it.

Q. Whether it was fully clothed? A. It was all that I noticed.

Q. The cloak upon her? A. A cloak or cape or something.

Q. Did you notice whether there were any articles thereabout? A. I didn't see anything, no bundles.

Q. You didn't make any observation? A. No, sir.

Q. How long did you remain there? A. I presume not more than two minutes.

Q. And where did you go then? A. I turned and went back; after the other folks got coming in, I turned and went back down where I was working.

Q. From whom did you think the cries came? A. Well, I found out they came from Mr. Crittenden.

Q. Yes, that is what I mean. Can you name some of the persons you saw there? A. Well, he was all the one there was when we got there, and then there was Mr. Stone, Mr. Pfersick, and Louis Meyer and Emerson Griswold and John Avery. Them I remember coming in; they were there when I went away.

Q. Did you see any one of the parties do anything with reference to picking up articles there? A. I saw Mr. Morrissey in the act of — that is, stooping as though he was picking up something.

Q. Well, — A. But I didn't see what he did.

Q. And where was Mr. Morrissey with reference to the body at the time of this act? A. Well, he was at my left, and nearer the head than I was. I guess he was a trifle above her head, I think; I wouldn't be certain.

Q. And how near to her head should you think? A. Oh, two or three feet.

Q. Did you make any observation of the position of the body with reference to the large beech tree there? A. No, not anything particular, only as she was lying in the hollow right close to the beech tree.

Q. Did you make any observation as to the situation of the leaves? A. Not with my own looking I didn't; my attention was called to the leaves, and I saw them.

Q. What? A. I say my attention was called to the disturbance of the leaves.

Q. When your attention was called to it, what did you see and observe? A. Well, I thought that they were disturbed from the hat down as far as her feet, what I could see.

Q. Did you observe the condition of the woman's hair? A. I couldn't tell anything about it, only it was combed over back.

Q. Whether it was dragging upon the ground? A. I didn't notice whether it was or wasn't.

Q. Did you observe the condition of the woman's skirts? A. Only they were down all right, as far as I noticed.

Cross-examination.

Q. (by Mr. BEER). Did you hear Mr. Crittenden say anything to Mr. Stone while you were there? A. I don't know as I did.

Q. Did you see Mr. Stone there? A. Yes, sir.

Q. How long did you stay there, altogether? A. Well, as I said, I shouldn't think I was there more than two minutes; I might have been three; but a short time.

Q. Did Mr. Morrissey and your son go up with you? A. Yes, sir.

Q. And did you three go back again at the same time? A. All went back together.

Q. Did you see the object that Mr. Morrissey picked up? A. I didn't.

Q. How far was that from where he stopped as if picking something up? A. Well, I couldn't say; it was somewhere between the hat and her head, and the hat I should say was about four feet from the head, — somewhere between the hat and the head; I couldn't tell.

Q. Did you see a veil there? A. I did not.

Q. Did you see anything else upon the ground except the hat? A. I did not.

Q. Did you return after going to your chopping place? A. No, sir; not until the body was removed.

Q. How many persons had arrived there before you left? A. Well, I don't know of any only that — those that I have stated already.

Q. Did you see how many persons were there when you left? A. Well, I named them over. There were some four or five or six.

Q. Were they walking around the body? A. They were standing still when I left.

Q. You left four or five or six there when you three left? A. Yes, sir.

Q. Did you see them walking around as you had been walking around? A. I hadn't been walking around only just as I walked —

Q. Did you see them walking about while there? A. No, sir; only to go there, that is all; to go from the road down there, that is all I saw them move.

Q. Who called your attention to the disturbance of the leaves? A. Mr. Crittenden, — that is, in a remark he made; he made it to some one else, and I heard it.

Q. Did you see any other disturbance? A. I didn't notice any.

Q. Around, above or below her? A. I didn't notice any, as I say, only from her hat the length of her.

FRANK E. MALLORY — *sworn*.

Q. (by Mr. HAMMOND). Where do you live? A. Shelburne Falls, Buckland side.

Q. Do you live with your father? A. Yes, sir.

Q. What is his name? A. Erwin Mallory.

Q. Whether you were with your father that morning of January 9? A. I was.

Q. Doing what? A. Chopping wood.

Q. Whether or not anything came to your attention, indicating something strange or unusual? A. Yes.

Q. What was it? A. I heard some one moaning up in the woods.

Q. What did you do? A. My father was with me when I first heard it.

Q. Whether any other person came there? A. During the time the moaning was going on, Edward Morrissey came there and said, "What is the matter up in the woods?"

Mr. PARKHURST. Never mind what he said.

Q. No matter what he said. You learned of something which had occurred from Edward Morrissey. Whether from his statement you learned of a death? A. No, I didn't.

Q. Whether Edward Morrissey made any statement to you that something had occurred? A. No; he didn't say that anything had happened.

Q. Well, what, if anything, did you see people do? Where did you go? A. We went up through the woods, where we heard the moaning.

Q. And whom did you find there? A. Mr. Crittenden.

Q. Now, state what you observed when you came to the spot where Mr. Crittenden was. A. Saw Mr. Crittenden sitting there on the ground, and the body of a woman lying on the ground.

Q. Had you known Mrs. McCloud in her life time? A. No, sir; I didn't.

Q. Whether you knew whose body it was except as you were told? A. No, sir; I didn't.

Q. Did you observe the surroundings, and, if so, tell the jury what you saw. A. Well, I saw her body on the ground and her hat lying there, and that is about all that I remember, that I know of.

Q. Did you see anything of Mr. Morrissey's movements? A. I did not; I see him standing there.

Q. Did you see him do anything with reference to picking up any object? A. I did not.

Q. Did you see him have something in his hand? A. I did.

Q. Now, state all about it. A. I heard Mr. Crittenden speak and say, "Don't touch anything."

Mr. PARKHURST. We object to the conversation.

Q. What did you see him have? A. Something I supposed was a veil.

Q. And where did he stand when you saw him have something in his hand? A. Stood right by the side of the hat.

Q. I don't ask you what was said, but whether or not something was said to him by Mr. Crittenden? A. There was.

Q. And whether or not, after something was said to him, Mr. Morrissey did anything? A. He did.

Q. State what he did. A. What he had in his hands that I supposed was a veil, he put on the hat.

Q. Was there any other fact that you observed? A. Not that I remember.

Q. Observe the condition of the body, which way the head and feet were? A. The head was up the hill, towards the road; the feet down hill.

Q. Whether or not you observed the condition of the leaves about the body? A. I did not.

Q. Observe the condition of the hair of the woman? A. Back from her face; that's all.

Q. Whether or not it was disturbed? A. I didn't know.

Mr. PARKHURST. What was his answer?

THE WITNESS. I don't know.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. BEER). Did you notice anything there by the hat except the veil which Mr. Morrissey had picked up? A. No, sir.

Q. Did Mr. Morrissey leave and go out into the road, did you see? A. He did not.

Q. Did he go any farther than you did up the hill? A. Only five or six feet, that is all.

Q. How many people were there when you left? A. Oh, I should say there were seven or eight or nine, somewhere along there.

Q. What were they doing? A. They were standing there, that is all.

Q. And people still coming, were they? A. I don't know. I see one man up in the road coming that way when I left.

Q. Were the people there walking around as they naturally would? A. Yes, they were moving around a little.

Mr. BEER. That is all.

EMERSON J. GRISWOLD — *sworn.*

Q. (by Mr. HAMMOND). Where do you live? A. In Buckland.

Q. Whether or not at the time of the death of Mrs. McCloud you were one of the officers of the town? A. I was one of the selectmen.

Q. Whether or not you went to the place where her body was found on Saturday? A. I did.

Q. And at about what time? A. I started from what is called the Bee Hive, about, — just ten minutes to 9 by my watch.

Q. Is that a place on Clement Street? A. Yes, sir.

Q. And about what time did you reach the field where the body lay? A. I couldn't tell; I went directly there.

Q. Whether any people were there in advance of you? A. There were a few, three or four.

Q. Can you name them? A. I can name Mr. Crittenden and Mr. Mallory; I don't think I could any more.

Q. If you made observation of the surroundings and of the situation of the body, won't you state it to the jury? A. Well, I noticed the body as it lay there, the hat was — well, about four feet from the head of the body. I noticed that the body lay in a very natural position. The hair —

Q. Which way the head and which way the feet? A. The head was toward the road, you might call it; not directly toward the road; it was up hill, of course.

Q. Did you notice the position of any parcels? A. No parcels there, that I saw.

Q. Did you notice the situation of the leaves? A. I noticed the leaves were pushed down at the feet. The limbs were a trifle separated. The leaves were banked up against the feet, and had been crowded down.

Q. The situation of the woman's hair? A. The hair seemed to be in a natural state, only it seemed as though the body had been pushed down the hill.

Q. The position of the woman's skirts? A. The skirts seemed to lay in a perfectly natural form; I should say they came down within eight or ten inches of her feet, at least.

Q. Whether or not you remained until Dr. Canedy reached there? A. I was there until after Mr. Canedy come; I was there until the body was taken to the house, and remained there with Mr. Canedy and looked the grounds over.

Q. Can you fix the location with reference to a large beech tree? A. I should say she lay a little toward the road from the large beech tree.

Q. And about how far from the road? A. Well, I should say it must have been about seventy feet.

Q. Whether there was a path coming down? A. There was a path of — I shouldn't say any regular path, but you could get in from down below where it was more open than it was above.

Q. Whether there was an open way? A. There was an open way there; some brush, of course, in the way.

Q. Whether or not you took any precautions toward keeping people off until the examination was completed? A. I employed a man to stay there and keep people away until the authorities came.

Q. What, in fact, was done with reference to the people who were there as bystanders, — whether they remained, or went away? A. They all went when the body was taken away. It took about all there were there to take the body away; they all went, at least.

Q. Whom did you employ? A. I employed Mr. Louis Meyers.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. BEER). At the time you went there, there wasn't any path leading down from the road to where the body was, particularly, was there? A. There was no beaten path; there was quite an open way there.

Q. And the leaf mould was heavy there then, wasn't it? A. The what?

Q. The leaves were in abundance there at that time? A. Quite a good many leaves there; yes, sir.

Q. You say there was no regular beaten path at that time? A. I didn't notice any.

Q. How far was the hat from the head of the body? A. I should say it was something like five feet.

Q. Did you pick the hat up? A. I did not.

Q. Did you notice the condition of the hat? A. I noticed that it lay with the rim down; right side up, you might say.

Q. Did you notice as to what was in it? A. I did not.

Q. Or upon it? A. I did not; no.

Q. Is that the hat? [Producing hat.] A. I should say it was.

Q. Did you notice whether there was a pin in the hat or not? A. I did not.

Q. Did you notice a veil? A. I did.

Q. Where was it? A. It was on a bush, between the body and the road.

Q. When did you notice that? A. I noticed that after the body had been taken to the house. I was looking over the ground with Dr. Canedy.

Q. Did you go with the body? A. I did not.

Q. Did you see the body put into the blanket? A. I did.

Q. Who lifted it there? A. Well, I couldn't say exactly who did.

Q. Did you notice how the body was taken to put into the blanket? A. Well, I should say one man took hold of the limbs and one man under the arms, putting their arms under the body and shoulder.

Q. Do you remember distinctly how the body was taken hold of in putting it into the blanket? A. No, sir; I do not.

Q. How many men were engaged in doing that? A. I think there were three.

Q. How many men helped in carrying the body up to the house? A. I should say there were six.

Q. Did you say you went to the house? A. I did not.

Q. Did you at all that day? A. No, sir.

Mr. BEER. That is all.

AMBROSE STONE — *sworn*.

Q. (by Mr. HAMMOND). Your full name? A. Ambrose Stone.

Q. Where do you reside? A. Shelburne Falls.

Q. Which side? A. Buckland side.

Q. Whether or not you were one of the persons present on Saturday morning at the place where the body of Mrs. McCloud was found?

A. I was there; there was only three ahead of me.

Q. Who were the persons that were ahead of you? A. The two Mr. Mallorys, Edward Morrissey, — Mr. Crittenden was there, of course.

Q. Will you give a description of what you saw when you first arrived? A. I saw the lady lay there dead.

Q. Speak a little louder. A. I saw her lay there dead, with her face up.

Q. Describe the position of the body. A. She laid nearly with her face up, and her feet a little ways apart, and seemed to be pushed into the leaves a little. The leaves were ruffled up as high as her shoes, as she lay.

Q. Up as high as the tops of her shoes? A. Yes, sir; the sides of her shoes.

Q. Describe a little more fully the situation of the leaves. A. They were ruffled up. It looked as though her feet had slid down a little ways, so that where her feet was the leaves seemed to be the same as if this was her feet, the leaves was up as high as her shoes.

Q. Is there anything else that you observed of the surroundings? A. Well, I saw her hat a little ways from her.

Q. Whether you saw the veil? A. No, sir.

Q. Whether you saw the situation of the leaves in any other place except at her feet? A. I didn't notice anything.

Q. Did you observe any disturbed trail of leaves leading to that spot? A. No, sir.

Q. Did you make any other observations than what you have given? A. No, sir; only her hair, the coil of hair back of her head; that wasn't all loose, but seemed to be back, a coil of hair, a twist of hair back, that much back of her head, lay on the leaves.

Q. Above her head? A. Above her head.

Q. Which way from her head? A. Well, of course it was a coil of hair that wasn't all undone, but it lay back about that much from her head as she lay there.

Q. How long did you remain there? A. Only a very short time.

Q. Were you there when Dr. Canedy arrived? A. No, sir.

Q. Can you name the persons who arrived after you did? A. Well, not all of them.

Q. Any? A. Yes, John Avery and Mr. Pfersick.

Q. Which Pfersick? A. Jacob Pfersick, and others, I can't tell how many more, who they all were.

Q. Speak a little louder. A. I said Jacob Pfersick and Emerson Griswold, he was there, John Avery. They came soon after I did; followed me right there.

Q. While you were there, whether the body remained undisturbed, wholly? A. Yes, sir; it had not been disturbed, wasn't at all while I was there.

Q. Did you go there again, or see the body again on that day? A. I see it when they carried it into the house. I was up there when they carried the body into the house, up to Mr. Crittenden's house.

Q. Did you have to do with the carrying of the body at all? A. No, sir.

Cross-examination.

Q. (by Mr. BEER). You say the Mallorys were there before you arrived, Mr. Stone? A. Yes, sir.

Q. How long after they went was it before you left? A. That they went away?

Q. Yes. A. I couldn't tell you, for I don't know when they went. They said they went before I did, and I wasn't there but a very few minutes.

Q. Didn't you see the Mallorys there? A. I did, sir.

Q. You didn't notice when they left? A. No.

Q. You say you left before they left? A. No, sir; I said they left before I did.

Q. And how long they were there, you can't say? A. No; not but a very short time, for I wasn't there but a very few minutes.

Q. Did Mr. Crittenden say anything to you while you were there? A. Did he say anything to me?

Q. Yes. A. Well, not directly to me, he didn't.

Q. Did he address himself to you? A. No, sir.

Q. Did he say anything about any spells that Mrs. McCloud had had? A. Why, he said he didn't know but what she might have fainted, and wandered down there where she was found, and froze to death.

Q. Didn't he say, "You know, Mr. Stone, she has been accustomed to have these spells," or something like that? A. Well, perhaps so; I couldn't tell, for certain.

Q. No, not perhaps. Did he say it? A. I don't know as he did.

Q. What? A. I couldn't say he did.

Q. Do you remember talking with me one time? A. With who?

Q. With me. A. At Mr. Mallory's?

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Q. Yes. A. Yes, sir.

Q. Do you remember telling me that then? A. No, sir.

Q. Did you ever tell anybody that? A. I don't know that I ever did.

Q. You say you presumed that he did tell you? A. I don't know but he did; still, I don't remember.

Q. Did you ever know of Mrs. McCloud having dizzy spells? A. I have heard of her having faint spells.

Q. What did you say Mr. Crittenden said about a fit? A. Never said anything to me about her having a fit, that I know of.

Q. Did he say anything in your presence? A. No, sir.

Q. At that time? A. He said he didn't know but she might have fainted, and wandered down where she was, and froze to death; that is all.

Q. You went up to the house, didn't you? A. I did, sir.

Q. Who had arrived before you went up to the house, how many persons? A. On the ground?

Q. Yes. A. It would be impossible to tell, for me.

Q. How many? A. Quite a number that I have told you, that came there after I arrived, and then I went away up to the house.

Q. Were you there when the doctor arrived upon the ground? A. No, sir.

Q. Did you drive up a horse? A. No, sir; the ladies drove up a horse, and I walked up by the side of it.

Q. Who were they? A. Mrs. Crittenden and her daughter.

Q. Were with the horse? A. With the horse and buggy.

Q. And you walked up across? A. No, sir; went right up by the side of them.

Q. Walking by the side of them? A. By the side of the horse; yes, sir.

Q. Did you go to the front door? A. No, sir.

Q. What? A. No.

Q. Did you go near the front piazza? A. When they got there they got out of the carriage, and I took the horse and carriage to the wagon shed, to the barn.

Q. When you drove up there — A. I didn't drive.

Q. Did you see any articles upon the piazza? A. I see some articles there; yes, sir.

Q. Did you see a bag there? A. I see what I called a shopping bag.

Q. Did you see anything like that [holding up bag] on the piazza?
A. I couldn't tell.

Q. Whether it was like that, or not? A. It is similar to it.

Q. Did it look anything like it? A. It was black.

Q. Where did you go after seeing that? A. I stayed there till after they brought up the body.

Q. Well, you took the team to the barn? A. I did, sir, and hitched it there.

Q. That is across the way from the house? A. Yes, sir; the opposite side of the street from the house.

Q. And you stayed up there until they came with the body? A. Yes, sir.

JOHN D. AVERY—*sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. John D. Avery.

Q. You live in Buckland? A. I do.

Q. Did you go to the place where Mrs. McCloud's body was found on the Saturday morning? A. I did.

Q. About what time? A. Somewhere around 9 o'clock.

Q. Can you state the persons who were there in advance of you? A. There was the two Mallorys and Mr. Morrissey, that was all that I can think of.

Q. Whether or not Mr. Crittenden sat there? A. Mr. Crittenden was there; yes, sir.

Q. State what you observed when you first arrived on the ground. A. I observed the body laying on the ground on her back, and her hat.

Q. Won't you state a little more particularly the location of the body and its direction? A. Well, she lay with her head a little up hill.

Q. Speak so they can hear you. A. She lay with her head up hill, her feet down; I should say east and west, as I remember it.

Q. Did you make any observation as to the condition of the leaves? A. I did.

Q. State fully about it. A. I thought they had been disturbed by her feet; it looked as though she had kind of slid down.

Q. Describe any more fully, if you can, the situation of the leaves about the feet. A. That is all I can remember about the leaves about her feet.

Q. Did you notice the hair of her head? A. I noticed the hair of her head; it was laying loose around, full of leaves.

Q. For how long a time did you remain? A. Well, I can't tell; I can't tell that, but I was there when the doctor got there.

Q. Had the body been moved at all when Dr. Canedy came? A. It had not been molested at all, to my knowledge.

Q. It was in exactly the same position when the doctor got there as when you first saw it? A. Yes, sir.

Q. Did you observe anything about there? A. Nothing but her hair.

Q. Did you see anything of the veil then or afterwards? A. I did not.

Q. Did you see what was done when the doctor arrived? A. Yes; I saw him pull down the collar and show her throat.

Q. Did you see? A. I see some black marks.

Q. What did they look like? A. Well, they looked purple.

Q. Well, in their shape and location, what did they look like? A. Well, I didn't get near enough for that, sir.

Q. Did you see anything else that the doctor did? A. No, sir.

Q. Did you have anything to do with carrying the body to the house? A. I did.

Q. State what was done about that. A. Well, there was six of us took her to the house.

Q. What was done first in the moving of the body? A. That was the first.

Q. Well, what was it? A. She was taken up and a blanket slid under her, and there was six of us took her and took her up to her father's.

Q. Do you remember as to the shape of the body, whether it was fixed and firm? A. I don't know about that.

Q. Well, whether it kept its shape as you carried it in the blanket? A. It did, because it was frozen.

Q. Did you observe anything as you got to the house? A. I observed some packages and things, some bundles on the piazza.

Q. State about those bundles. A. I can't say any more than that I saw them, and her satchel, or somebody's satchel, that is all.

Q. Whether it resembled what I hold in my hand? A. I couldn't tell.

Q. You saw a satchel? A. I did.

Q. And how many bundles? A. I can't tell.

Q. As near as you can remember. A. I should say three or four.

Q. You think you saw a satchel and three or four bundles on the piazza? A. Yes, sir; I don't know whether that is the one, or not.

Q. Did you remain at all after the body was deposited in the house? A. Not any longer than to get her on to the sofa.

Cross-examination.

Q. (by Mr. DOWLIN). What is your employment? A. Cutler.

Q. Do you live in the village of Shelburne Falls, or Buckland? A. Buckland.

Q. Whereabouts in the village of Buckland? Turn round to the map there and indicate where you live. A. Well, I will if I can. Sears Street, I think it is, sir.

Q. Sears Street? A. I think it is Sears Street, sir.

Q. That goes from School Street? A. That leads from Green Street; it is a cross street; Clement Street and Green Street.

Q. On which side of Sears Street, the east or west side? A. West side.

Q. How did you come to go up the Crittenden road, the place where the body was found? A. Well, I got the news.

Q. Speak up louder, please. A. I got the news that Mrs. McCloud was found dead up there.

Q. Where did you get the news? A. I was just coming out of my house.

Q. Who told you? A. Mr. Littlejohn.

Q. Mr. Littlejohn? A. Yes.

Q. Who was with Mr. Littlejohn? A. I don't remember that anybody was.

Q. In what direction was Mr. Littlejohn going? A. South, to the south, right there by the corner of Clement Street and Sears Street.

Q. Did you accompany Mr. Littlejohn? A. Up?

Q. Did you accompany Mr. Littlejohn to the place where the body was found? A. I did not; I started before he did.

Q. And did you meet anybody on the way, or see anybody ahead of you? A. I overtook quite a number.

Q. How many did you overtake? A. I couldn't tell.

Q. How many did you see in the road when you got there, opposite? A. I couldn't tell that, neither.

Q. How many were there around the body when you got there? A. There wasn't any, not that I remember of, except what I have mentioned, and Mr. Crittenden.

Q. So that you got the news from Mr. Littlejohn? A. Yes, sir.

Q. And then you went faster than all the rest? A. No, not all the rest; no, sir.

Q. Well, there wasn't any one there? A. I say there was, but I don't know who they were.

Q. Do you know how many there were there? A. No, sir; I don't.

Q. Whom have you talked with about this? A. I don't know; I think I spoke to Mr. Kendrick about that.

Q. Den. Kendrick? A. I think so; yes, sir.

Q. Whom else have you talked with about it? A. Nobody that I know of, that I can think of.

Q. Was there any well-defined path leading from the road down to the body when you reached there? A. I don't think so.

Q. So you went through the bushes? A. Yes, sir.

Q. (by Mr. KNOWLTON). Did you say you did think so, or didn't

think so? A. I don't think there was a beaten path there, though there may have been.

Q. (by Mr. DOWLIN). Just answer the question, and then stop. Who assisted you in putting the body into the blanket, to carry home?

A. Mr. Littlejohn, Mr. Pfersick, and a Mr. Wilson, — I think, — there were six of them. I don't remember just who they were now.

Q. Who first picked up the body from the ground to place it in the blanket? A. That I can't tell. I was probably one of the first to take hold of her to lift her up.

Q. What portion of her body did they touch? A. I don't know what they done; I took hold of her arm.

Q. You just take hold of me the same that you took hold of that body. A. I don't know as I can; your arm isn't like hers.

Q. Well, take my arm, and put it in the position of her arm. A. I think it was somewhere like this [showing].

Q. Now, show me just how you took hold of the body. A. I can't tell exactly how I took hold.

Q. Well, as near as you can remember. A. That [showing] is as near as I can remember.

Q. One hand under the arm, and one under the shoulder there? A. I think it was, yes; I don't remember just exactly how it was.

Q. After you and your companions took the body to Mr. Crittenden's house, what did you do with the body? A. Laid it on the sofa.

Q. Did you lay it on a blanket on the sofa? A. The blanket we got out from under her when we put her on the sofa.

Q. Did you lay down the body, and then lift it from the blanket and put it on the sofa? A. I think so; I won't be certain about that, sir.

Q. Who lifted the body from the blanket to the sofa? A. Those that helped take her up there.

Q. You can't say better? A. There were two or three or four.

Q. Were you one? A. I was.

Q. What was done with the blanket? A. That I don't know.

Q. Did you take it out of the house? A. I did not.

Q. Through what door did you take the body in going into the house? A. The front door, I am pretty certain.

Q. Now, as you understand the location of the house, there is a door opening to the front, and a door opening to the side, and a piazza there. Now, did you go across the piazza with the body? A. No, sir; I think we went right into the front door, the east door, and put her in the front room.

Q. Did you come out the same way you went in? A. Yes, sir.

Q. You say you saw some packages there? A. Yes, sir.

Q. What packages did you see there? A. I told you I didn't know what packages.

Q. No, you haven't told me. A. Well, I do now.

Q. Where were they? A. On the piazza.

Q. Did you notice any paper bags? A. Them is what I call the packages; I called them that. I didn't examine them.

Q. Did you see that shopping bag there? A. I don't know whether it was that, or some other.

Q. Did Mr. Crittenden go ahead of you in taking the body up, or did he follow you up? A. I think he went ahead.

Q. Did you see the hat on the piazza? A. I didn't.

Q. Did you see any one have the hat? A. I didn't.

Q. Did you see Mr. Crittenden have the hat in his hand? A. I didn't.

Q. Where did you go after you had lifted the body on the sofa in the parlor? A. I went home.

Q. Directly home? A. Yes, sir.

Q. How long did you stay at home? A. Not but a very short time.

Q. Where did you go after you left home? A. Down street.

Q. Who was the first person you spoke to? A. I don't know, certain; it was my wife after I got home.

Q. After you left your home? A. I don't know.

Q. Didn't you talk with Den. Kendrick on Ward's corner after you left your home? A. I don't remember that I did.

Q. Don't you remember that you talked with Den. Kendrick on the corner? A. I don't.

Q. Where did you talk with him? A. If I talked with him at all, it was in his store; I can't tell.

Q. Do you remember seeing Jack O'Neil on the corner when you were talking with Den. Kendrick? A. No, sir.

Q. Have you stated to neighbors that you did see Jack O'Neil on the corner when you were talking with Den. Kendrick? A. No, sir.

Q. You will swear to that? A. I will swear to that, sir.

EDWARD MORRISSEY — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Edward Morrissey.

Q. Your business? A. Grinder.

Q. Where do you live? A. Shelburne Falls, Buckland side.

Q. Whether you, on Saturday, January 9, went with the Mallorys to the place where Mrs. McCloud's body was found? A. Yes, sir.

Q. When first did you have any knowledge that a death had occurred? A. When I went up and seen it.

Q. Had you heard of any death before you were there where the Mallorys were chopping? A. No, sir.

Q. When you were in the wood lot of the Mallorys, what first, if anything, attracted your attention? A. We heard some cries up there in the woods, and went up to see about it.

Q. Whom did you find the cries came from? A. Mr. Crittenden and Mrs. McCloud.

Q. Where was Mr. Crittenden sitting, or standing? A. Beside her.

Q. Describe the position of this woman's body. A. She was lying down as though she lay down and went to sleep, I should call it.

Q. Won't you describe the position of the body? A. What do you mean? She was lying down, as anybody would be lying down, I suppose.

Q. In what position in reference to the beech trees? A. I should think a little slant-ways, like that [indicating], from the trees.

Q. How far from the tree? A. I should think three or three and a half feet.

Q. Which way was her head, with reference to the highway? A. Pointing up toward the road a little mite.

Q. Notice anything with reference to the situation of the leaves round about? A. Roughed up around where the hands were.

Q. Anything in reference to the situation of the hair on the head? A. I noticed there was just about one turn out of her hair where it was done up in the back, — was loose.

Q. Where did the loose hair lie, in reference to the body? A. Lay under her; lying on it; scattered out some.

Q. Did you see any article there you picked up? A. Picked up a veil and put on the hat there.

Q. Where did you find it first? A. Between the hat and head.

Q. You think you could tell the veil if you should see it [showing veil]? A. Looks something like it. It was a black veil. I don't know whether that is the one, or not; looks like it.

Q. Whereabouts in reference to the hat and head? A. Between the head and hat.

Q. How far was the hat from the head? A. Two and a half or three feet.

Q. What, if anything, did you do with the veil? A. Laid it on top of her hat.

Q. How was the veil situated when you saw it? A. Up in a bundle, with three or four leaves mixed with it.

Q. Whether there was any pin in it when you saw it? A. No, sir; there was no pin. If there was, I didn't see it.

Q. How long did you stay there? A. Not over ten minutes, anyhow.

Q. Did you leave with the Mallorys? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). Where were you on that morning when you first heard noises in the woods? A. Down at our house.

Q. Where is your house? Please indicate on the map there. A. I suppose this must be it down here [indicating].

Q. That is School Street right along there? A. Yes, sir.

Q. This is School Street here, leading up from Ashfield Street, and that is Union Street there, coming across from the Crittenden road to School Street? A. Yes, sir.

Q. Is that where your home is, just above Union Street, on that side of School Street? A. Yes, sir.

Q. Are there woods just beyond your house towards the Crittenden road? A. It is all full of woods up there; all woods.

Q. Was it in those woods that you heard the noises? A. Yes, sir; upon that road.

Q. Were you with any one when you heard them? A. When I heard the noises?

Q. Yes. A. No.

Q. Whom did you meet on your way to investigate those noises? A. I went up to where Mr. Mallory was working, and asked him if he heard it, and he said he did; then we took a walk up.

Q. Who was there when you got there? A. Mr. Crittenden and his daughter, Mrs. McCloud.

Q. Do you know which daughter it was? A. Mrs. McCloud.

Q. Did you notice any other member of Mr. Crittenden's family there beside him? A. I noticed one going up through on the road before we got there, going from where the body was on the road towards the house.

Q. You noticed one of his daughters going towards the house from where the body was? A. I think so.

Q. Could you see whether she had anything with her, or not? A. I couldn't see very well, going up through the woods there.

Q. When you got there where the body was, in what position was Mr. Crittenden as to the body? A. I think he was sitting on her left side, with his hand up to his face, like that [indicating].

Q. Did you hear him make any remarks? A. I asked him what the trouble was, and then he spoke to me.

Q. What did he tell you? A. Well, he said that she went down street last evening to do some shopping — [Objected to.]

Mr. KNOWLTON. I supposed he was going to inquire as to her being subject to fits. [Question withdrawn.]

Q. Did you hear Mr. Crittenden say anything in regard to the condition of his daughter — physical condition of his daughter? A. What he told me that she was subject to?

Q. What did he tell you she was subject to? A. Fainting spells; dizziness, fits, etc., like that, he said; "and I presume she wandered off here in one of those spells and died." That is what he told me, — told the whole of us there.

Q. Was Mr. Stone present there when you were there? A. Mr. Stone came when he was at the last end of it; and he said to Mr. Stone, "You know, Mr. Stone," and Mr. Stone said, "Yes, I know all about it." That is the way he said it.

Q. Are you well acquainted with those woods, Mr. Morrissey? A. Quite well; I ought to be; been living there long enough.

Q. Now, did you go above the body towards the road? A. No, sir.

Q. Did you look up towards the road? A. Yes, sir.

Q. Was there any well-defined path leading from where the body was up the road? A. No path whatever.

Q. What was there between the body and the road, as to bushes or undergrowth? A. Well, a lot of small bushes growing up.

Q. Small bushes? A. Bushes, yes.

Q. Did you notice any sign of disturbance of leaf matter around on the ground there? A. Nothing only what I see right where her hands was; that is all I seen.

Q. Was there, to your mind, any evidence of a struggle there? A. It seems as though I could see no struggle there, anyhow.

Q. Did you see by the condition of the bushes, or of the leaves, anything that would indicate to your mind anything of that nature?

MR. KNOWLTON. We object. I pray your Honors' judgment.

SHELDON, J. Whether he saw anything, you can ask him.

THE WITNESS. I didn't see anything; everything was as flat as that right there. All the struggle was just a few leaves scattered up where her hands was laying, that is all the leaves there was scattered up.

Q. You looked around there? A. Oh, I just took a bird's eye view, as the fellow said, around while I was standing there.

Q. While you were taking that bird's eye view, did you notice this hat there? A. Well, there was one there that looked something like that.

Q. One that looked something like that? Did you pick it up? A. No, I didn't touch it at all.

Q. How was it lying, over that way? A. No, the feathers were up.

Q. Lay like that? How far from the body? A. Oh, between two feet and a half and three feet.

Q. Did you pick up that veil? A. One like it; I don't know whether that is the one.

Q. Was there a pin in it? A. No, I didn't see any pin.

Q. How was it when you picked it up? A. All rolled up, rolled right up, and leaves mixed in it.

Q. Rolled up how? A. It was rolled up, and a couple of leaves, two or three leaves, mixed with it.

Q. When we saw this veil in the lower court, there was a pin in it. Did you notice any pin in it? A. No.

Q. Did you notice whether there were any pins in the hat, or not? A. I didn't notice at all.

Q. Is there a door opening from your house towards the woods? A. Yes, sir.

Q. Towards the spot where this body was found? A. Yes, sir.

Q. And a window opening that way? A. Yes, sir.

Q. Who was there at your home on Friday night, January 8, at 6 o'clock? A. There was me and my brother and the boarders there, and mother and sister, and another fellow named William O'Connell.

Q. What time did William O'Connell come there? A. Well, he was there when I got home; I don't know what time he did come.

Q. What time did you get home? A. Well, along about twenty minutes past 5.

Q. What time did you leave home that night? A. Between a quarter and half past 6.

Q. Between a quarter past and half past 6? A. Yes, sir.

Q. Where was William O'Connell then? A. I left him at the house.

Q. Where did you go? A. Over to Meyers'.

Q. Will you turn around and point to where Louis Meyers' house is there on the map? A. I presume this must be the one.

Q. On the corner of Union Street and Crittenden road? A. Yes, sir.

Q. In what room were you in the Louis Meyers' house? A. Kitchen.

Q. Are there any windows opening towards the west in the kitchen? A. Windows, there is windows there, yes; doors open to the east.

Q. What did you do after you reached Mr. Meyers' house? A. Sat there and had a talk with him.

Q. What time did he leave home, if at all, that night? A. Well, I should think somewhere around 7 o'clock when he left.

Q. Did you remain after he left? A. Yes, sir; I stayed there till he came back.

Q. In the kitchen? A. Yes, sir.

Q. During the time that you were at your home, or during the time that you were at Mr. Meyers' home, did you hear any loud outcry of any kind? A. No, sir; nothing whatever.

Q. Was your attention attracted by any peculiar noise? A. No, sir.

Q. Just outside the window of the house where you live, opening toward the spot where the body was found, what is there, if anything?

A. Just outside the window?

Q. Yes. A. A barrel of water there.

Q. To what use does your family put that barrel? A. Well, we drink it, of course, and use it.

Q. Is the window kept closed tightly there all the time? A. It is, only when we want to get water.

Q. How was it this night on the 8th of January? A. It must have been shut, because it was pretty cold.

Q. Only when you want to get water it is opened? A. Yes, sir; raise it up and get in the water, and shut it down again.

Q. Raise up the window, reach out and dip in the water? A. Yes, sir.

Q. How far is that window from the place where you found the body, — you saw the body? A. I couldn't tell; probably one hundred yards or more.

Adjourned to Wednesday, July 21, at 9 A.M.

THIRD DAY.

JULY 21, 1897.

The court came at 9 o'clock.

The roll of the jury was duly called, and the prisoner answered to his name.

FRANCIS B. WELLS — *sworn*.

Q. (by Mr. KNOWLTON). What is your name? A. Francis B. Wells.

Q. What is your business? A. Pharmacist.

Q. You reside in Greenfield? A. Yes, sir.

Q. At any time did you see some butter plates containing substances that were brought to you by Dr. Zabriskie? A. Yes, sir.

Q. Do you remember the date? A. I received them Saturday, January 9.

Q. Are you acquainted with the use of the microscope? A. I am to some extent.

Q. What did you see? What did Dr. Zabriskie show you? A. I saw red blood cells —

Q. What did Dr. Zabriskie show you? A. Oh, the material. There were three or four individual butter plates.

Q. Were they numbered in any way? A. They were marked. The red blood on two of them was from the vault of the vagina.

Mr. KNOWLTON. I shall have to recall Dr. Zabriskie for the purpose of indentifying the plates, and I will call on this witness for the marks that he saw.

SHELDON, J. Such evidence seems to be proper for the purpose.

Q. (by Mr. KNOWLTON). You will proceed. A. One was marked mid-zone and one vault of the vagina. The other two were not marked. One was taken from the entrance, and the other was mucus from the cervical canal.

Q. That is, they were so marked? A. No. The entrance and the mucus from the cervical canal were not marked. It was not necessary.

Q. What did you find marked? A. The vault of the vagina and mid-zone.

Q. Those two were marked? A. Those two were marked.

Q. Did you make an examination of the contents of those butter plates by the microscope? A. Yes, sir.

Q. Tell what you found, distinguishing each. A. Well, the most material one, the most important one was from the vault of the vagina. I found in that spermatozoa, numerous on some of the fields, and I found also squamous epithelia.

Q. What is that second thing? A. The epithelia, cells which involve the membrane in different parts of the body.

Q. The mucous membrane is that which covers inside surfaces of the body? A. Yes, sir.

Q. Including the vagina? A. Yes, sir.

Q. Did you find those spermatozoa in any one except that marked vault of the vagina? A. No.

Q. That was the middle zone? A. No, the vault.

Q. What did you find in the others? A. Blood cells and epithelia.

Q. To what extent did you find spermatozoa? A. Well, they were very numerous on some of the fields.

Cross-examination.

Q. (by Mr. BEEB). When did you make the examination? A. I examined Sunday, Monday, Tuesday and Wednesday.

Q. In what order did you examine them? A. I paid no attention to the order. I did not consider that material.

Q. What did you say? A. I paid no attention to the order, as I did not consider that material.

Q. Can you tell which one you examined first? A. No.

Q. When did you examine the one in which you found spermatozoa? A. Sunday, Monday, Tuesday and Wednesday.

Q. Did you determine before Tuesday that they were spermatozoa? A. Yes; I found them on Monday.

Q. Did you find ciliated epithelia? A. No, sir; squamous epithelia.

Q. Did you see any hair-like projections? A. No.

Q. You only found spermatozoa in one of the saucers? A. That is all.

Q. Where did you keep those saucers? A. In a box, — covered box.

Q. Where? A. On the laboratory table.

Q. In your store? A. Yes, sir.

Q. You have employees? A. Yes, sir.

Q. Have they access to the laboratory? A. Why, yes; certainly.

Q. To where those saucers were kept? A. No, sir.

Q. Were those saucers under lock and key? A. No, sir; they were not. I gave instructions not to touch them.

Q. You were not with your employees all the time? A. Well, I think I was most of the time that they were there.

JACOB PFERSICK — *sworn*.

Q. (by Mr. HAMMOND). Your name is Jacob Pfersick? A. Yes, sir.

Q. Where do you reside? A. Shelburne Falls, Buckland side.

Q. Whether or not you were at the place where Mrs. McCloud's body was found on Saturday, January 9? A. Yes, sir.

Q. When first did you know of any accident? A. I know Mr. Stone had been telling me.

Q. When first did you reach the spot? A. I don't know; a little after 9.

Q. Whom did you find there on arriving? A. Mr. Mallory and his son, Mr. Morrissey and Mr. Griswold.

Q. State what you first observed on arriving? A. I saw Mrs. McCloud lying there on her back.

Q. State as to the position of the body and the surrounding circumstances. A. Well she had her feet spread out a little, perhaps eight or ten inches.

Q. Did you observe the leaves? A. Not that I know of.

Q. Did you observe the hat? A. No.

Q. How long did you remain? A. Well, I helped put her in the blanket and helped carry her up to the house.

Q. On reaching the house, what did the carriers do? A. They laid her in the front room on the sofa.

Q. Did you remain any longer? A. No; I came right back again.

Q. Did you go back again to the place in the woods? A. I came right down that road, and go right straight down to my building; I had been repairing a building.

Q. Did you notice any finding of a veil? A. No.

Cross-examination.

Q. (by Mr. DOWLIN). How many people were there when you got there? A. Mr. Mallory and his son, and Morrissey and Mr. Griswold; may be two or three little boys.

Q. Did you pass any people on the road? A. No, sir; not going up.

Q. Pass many coming back? A. Yes, sir; a slight number.

Q. Were there any coming down to the place where the body was when you were leaving? A. When I came down, Dr. Canedy spoke to Mr. Griswold —

Q. Never mind. I ask if there were many coming down? A. No.

Q. You passed a good many going up when you were going back? A. Yes, sir.

Q. You only stayed there a moment? A. Yes, sir.

WALTER SHAW — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Walter Shaw.

Q. Where do you live? A. I live in Buckland.

Q. What is your business? A. I am a mechanic, cutlery hand.

Q. Do you recollect where you were on Saturday, January 9? A. Yes, sir.

Q. Where? A. Well, I was out in my back yard, chopping wood with my boy, and a friend that was up there named Depledge, and Mrs. O'Brien came out and said Mr. Stone was hurrying up the road —

Mr. PARKHURST. We object.

MASON, C. J. They object to the conversation.

Q. Well, pass what was said. After you had some information, what, if anything, did you do? A. Well, I went and stepped out of my yard and looked up the road, and I saw Mrs. Meyers with her head out of the window hollering something.

Q. After that what did you do? A. Well, just after that I saw Mr. Pfersick and Mr. Griswold hurrying up the road, so we, my boy and myself, went out and went up with them.

Q. What road? A. Up the Crittenden road.

Q. How many in your party? A. Well, I couldn't tell; there were Mr. Griswold and Mr. Pfersick and one or two more; I think Mr. Avery was there.

Q. Did you go to the place where the body lay? A. Yes, sir.

Q. How many were there on your arrival? A. On my arrival there was the two Mallorys and Mr. Crittenden, and the two parties that went up with me.

Q. Describe the position of the body. A. It lay on its back with its feet spread out, a foot or a little more, with its skirts and arms straight down, the face up.

Q. Did you notice the condition of the leaves? A. Yes, sir; they were banked right up at her feet, and her hair was sticking out to one side, — a little to one side.

Q. Away from her head? A. Yes, sir.

Q. Were you there when the body was placed on the blanket? A. Yes, sir.

Q. Can you state who were there when the body was taken away? A. Well, I may not remember them all. Mr. Griswold, Mr. Pfersick and Mr. Crittenden and Mr. Peters, I think; I am not sure.

Q. Did you assist in carrying it away to the house? A. No, sir.

Q. Did you make any other observation than what you have mentioned? A. No, sir — well, I saw the hat there.

Q. And did you see the veil there at any time? A. No, sir.

Mr. HAMMOND. That is all.

[No cross-examination.]

J. ADDISON TUCK — *sworn*.

Mr. HAMMOND. If the court please, this witness is taken a little out of course, but he comes from a long distance, and it is a very short matter.

Q. (by Mr. HAMMOND). What is your name? A. J. Addison Tuck.

Q. Your residence? A. Gloucester, Mass.

Q. Your business? A. Public reader.

Q. Whether or not you were in Shelburne Falls on Thursday afternoon, January 7 last? A. I was.

Q. And with whom were you? A. Mr. F. H. Amsden.

Q. And what time did you arrive in the village? A. A few minutes past 4.

Q. And whether or not you came by train? A. Came by train from Boston; left Boston 11.30.

Q. And, on reaching the depot, whether or not you met Mr. Amsden? A. I did; yes, sir.

Q. And where did you and Mr. Amsden go, if you left the depot? A. We went directly to the store.

Q. And at his store, whether or not you met any person? A. I did.

Q. And who was the person, the name? A. I met Mrs. McCloud and his lady clerk

Q. Can you give her name? A. Miss Woodward.

Q. Miss Effie Woodward? A. Yes, sir.

Q. Whether or not you observed anything that was being done in the way of business between Mr. Amsden and Mrs. McCloud?

Mr. BEER. We object to anything being stated that occurred on Thursday, as being remote and indefinite. It was claimed in the opening that the witness saw certain things on Thursday, but it was not claimed in the opening that those things were definitely connected with the defendant, and we object to anything so remote being testified to. If the object of the question is to show what Mrs. McCloud was doing on that day in regard to money, we object to its being stated.

SHELDON, J. What is it you expect to show, Mr. District Attorney, by the question?

Mr. HAMMOND. We expect to show the money which Mrs. McCloud had at that time, the ten-dollar bill especially, and follow it with other evidence tending to show that that ten-dollar bill remained

with her, and with other evidence to satisfy the jury that the defendant had that ten-dollar bill immediately after the death.

SHELDON, J. You may put the question.

Mr. BEER. What?

SHELDON, J. I say that the question may be put.

Mr. BEER. We except.

SHELDON, J. Yes.

Q. Mr. Tuck, did you see any money transaction going on? A. I did, sir.

Q. State to the jury what you saw being done; first, whether Mrs. McCloud presented any check or voucher for money? A. I saw Mrs. McCloud open her pocket-book and take out two checks. She gave one to Mr. Amsden in payment of a bill; I think it was \$16 or \$18, I don't quite remember how much. He couldn't cash the check, and he went out of the store. While he was gone, I stood by the counter talking with Mrs. McCloud. Soon he came back with the money and laid it right down where we were talking. I saw a ten-dollar bill, some small bills and several silver dollars. A mistake was made in cashing the check, and he went to the store to rectify it. The check was for \$39. He brought back \$32 and some cents. And while he went to the store and rectified it, the money he brought was laid right by the side of us, and he came back with the \$7, I think it was, and paid it to Mrs. McCloud.

Q. Whether or not you saw Mrs. McCloud take up her money? A. I did; yes, sir.

Q. And did you see what disposition she made of it? A. She gave the silver to Mr. Amsden in payment for his bill, and took and put the rest in her pocket-book with another check.

Cross-examination.

Q. (by Mr. BEER). Had you ever met Mrs. McCloud before? A. No, sir.

Q. You were only then introduced to her? A. Yes, sir.

Q. Did you stay right round and look to see what was going on, only having that amount of acquaintance with her? A. No, I didn't stay round. They brought the money where we were, and if they hadn't made the mistake and the money laid there, I should have thought no more about it.

Q. While anything was done with one of the checks, or both checks, were you standing talking with Mrs. McCloud? A. Yes, sir.

Q. And how long did you stand there talking? A. I should judge ten minutes, possibly.

Q. Were there any other persons there other than those that you have named? A. No, sir.

Q. During any of the period? A. No, sir.

Q. You saw nobody there except — A. I did not; that is all.

Q. Going in or going out? A. No, sir.

Q. What part of the store was this? A. We were at the farther end, and this counter was in the middle of the store, perhaps two-thirds of the way down.

Q. What did you see Mr. Amsden have when he came back? A. He had some silver dollars and a bill.

Q. Did you notice the denomination of the bill? A. That he had? No, sir, I did not; I simply heard him count it off to her.

Q. You didn't inspect them yourself? A. I didn't; no, sir.

SHELDON, J. Did the witness state the time of day that this occurred?

Mr. HAMMOND. Yes, your Honor. [To witness.] Will you state?

THE WITNESS. About ten minutes past 4 the train arrived; I should judge this was twenty minutes past 4. We went directly from the depot, — a very few minutes, — directly to the store.

Q. (by Mr. HAMMOND). In order to remove an ambiguity, I would like to ask the witness a question. Will you state again what, if anything, you said in reference to observing the bills that were brought in first? A. Oh, I didn't say anything about it; it was what he brought in the second time.

Q. What did you observe of the money he brought in first? A. I observed some silver dollars and some small bills, and a ten-dollar bill. It wasn't piled up, it was sort of scattered round as he counted it.

Q. (by Mr. BEER). That is the first time in your testimony you have stated any denomination, isn't it? A. Yes, sir.

Q. What? A. I beg pardon.

Q. You haven't said anything about a ten-dollar bill until in reply to the last question, have you? A. No, sir.

Q. Well, you told me that you had not seen the denomination of any bill, didn't you? A. I did not; I told you I had not seen the denomination of what he brought in the second time. What he brought in first I saw, part of it.

Q. How far were you standing from Mrs. McCloud? A. Possibly two feet.

Q. And was any one else standing right there? A. No, sir; the young lady was behind the counter on the other side, right opposite. This was the middle counter; the young lady was standing on the right.

Mr. KNOWLTON. To prevent any misunderstanding, I do claim that he mentioned exactly about the ten-dollar bill and the small bills in his first direct examination.

Q. (by Mr. BEER). Did you mention in your first direct examination any bill of any denomination? A. Yes, sir; the first time.

Mr. BEER. I didn't hear it.

Mr. KNOWLTON. I think you were mistaken, Mr. Beer. The record will tell hereafter.

Q. When was the subject of money brought first to your attention after that? A. I think I was reading the papers and saw that the lady had been murdered —

Q. Wait; I am not asking you what the papers said, I am asking you the time when. A. Well, possibly two or three days afterwards.

DR. F. H. ZABRISKIE — *recalled*.

Q. (by Mr. KNOWLTON). Did you in any way mark those butter plates? A. Yes, sir.

Q. Tell how. A. I put labels on them.

Q. And what were the labels? A. I forgot how they were marked, but I think they were marked No. 1, 2 and 3; No. 1 the lower zone of the vagina, No. 2 the middle zone, and No. 3 the vault, or upper zone; I wouldn't be positive; but they were marked with labels which were pasted onto them, — bottle labels.

GEORGE D. CRITTENDEN — *sworn*.

Q. (by Mr. KNOWLTON). What is your full name, Mr. Crittenden? A. George D. Crittenden.

Q. And Mrs. McCloud was your daughter? A. She was.

Q. What was her full name? A. Hattie Evelyn.

Q. And she had married a McCloud? A. Yes, sir.

Q. Was she your oldest daughter? A. She was.

Q. You had nine? A. Yes, sir.

Q. All living but her? A. Yes, sir.

Q. She became a widow how long ago, about? A. Seven years ago last June.

Q. And she lived — I will lead a little on these immaterial things — she lived next house beyond you on the hill? A. She did.

A. How long had she lived there? A. Ever since the death of her husband.

Q. Her family consisted of whom? A. One little girl.

Q. No one else lived in the house but those two? A. No.

Q. The last time you saw your daughter? A. Last time I remember seeing her was Thursday afternoon.

Q. What time of the afternoon? A. About the middle of the afternoon.

Q. Where was she then? A. She was in her house.

Q. Did you have some talk with her then? A. I did.

Q. Did you pay her any money or checks then?

Mr. BEER. We object to this, for the same reason as before.

Q. (by Mr. KNOWLTON). Was it the day before her death? A. Yes, sir.

SHELDON, J. You may put the question.

[Counsel for prisoner excepts.]

Q. You had already answered "yes." What did you pay her? A. I gave her two checks; one of \$40 and one of \$39.60.

Q. Have you either of them with you? A. I have the thirty-nine dollar and sixty cent one.

Q. [Showing check.] That is one of the checks you gave her that day? A. Yes, sir.

Q. When did you get it back, and where from? A. Well, it came back in the regular course, through the bank; I cannot tell when, exactly.

Mr. KNOWLTON. We offer it.

[Check for \$39.60, marked Exhibit B.]

Mr. BEER. Is it understood our objection shall reach to all this line of questioning, and the subject of money, and the introduction of the check?

SHELDON, J. The court so understood.

[Exhibit B was then read in evidence.]

Q. Were either of the endorsements on the back when you gave it to her? A. No.

Q. Is that your daughter's handwriting on the back? A. It is.

Q. Have you the other check you gave her? A. I have not.

Q. Have you ever had it back again? A. I have not; I think not.

Q. Will you look at that, and see if that [offering the witness the check that was testified to by Dr. Canedy as having been seen by him in the wallet] — is that the check? A. That is the forty-dollar check, sir.

Q. Is that the one you gave her at the same time? A. It is.

Mr. KNOWLTON. I offer that. [To counsel for defence.] You have already seen that.

Mr. BEER. Yes, subject to our objection.

Mr. KNOWLTON. That I will not take the trouble to read in full. It reads the same except it is made out for \$40, and is not endorsed.

Q. At that time were you owing her money? A. I was.

Q. You need not answer this until — my friends may have a special objection to this question, which is independent of this. Did she say anything to you about the purpose for which she wanted money?

Mr. BEER. Yes, we object to that question.

SHELDON, J. I do not see how it is competent.

Mr. KNOWLTON. I do not press it.

Q. What time did you give her these checks? A. As near as I can recollect, it was between 3 and 4.

Q. You didn't see her go away? A. I did not.

Q. You didn't see her on Friday at all? A. I don't know that I saw her on Friday; I might have seen her, but I don't remember it.

Q. When was your attention called to the fact that she was missing? A. The next morning.

Q. You don't mean Friday morning? A. No; I mean Saturday morning.

Q. At what time in the morning, sir? A. Well, I should think half-past seven, somewhere from there to 8 o'clock.

Q. And in consequence of conversation with whom, if you recollect? A. I don't know as I can tell; some one of the family said that she hadn't come home.

Q. When did you begin to search for her? A. Not till about 9 o'clock.

Q. What did you do then, sir? A. I went down the hill with Mr. Peters.

Q. That is, you harnessed your horse? A. Well, he and I, I think, harnessed the horse, and my wife and daughter took the horse and went to the village to look for Hattie.

Q. You didn't go down with the horse? A. No; I followed on foot a few minutes afterwards, with Mr. Peters.

Q. Did you go down what is called the Crittenden road? A. Yes, I did.

Q. And who saw the body first, you, or Peters? A. I did.

Q. And where were you when you first saw the body? A. Well, I was at the first steep pitch as you come down the hill.

Q. In the road? A. Yes, sir.

Q. In what position in the road with reference to the body, before you got to it, or after? A. Before I got opposite to it I saw it. There were no leaves on the trees, and it was in plain sight.

Q. Those trees about there are the kind that shed their leaves in the winter? A. Yes, sir.

Q. Is there any difference in the power of seeing through the bushes, as the jury saw it day before yesterday, than it was in winter? A. Oh, you can't see through it now.

Q. It was easier to see then than now? A. Yes, sir.

Q. How far were you, Mr. Crittenden, from the body when you saw it? A. I should say five or six rods.

Q. How far should you say the body was from the road in a direct line? A. I should guess it was four or five rods.

Q. Did you recognize it as the body of your daughter when you saw it? A. I did not know certainly.

Q. What did you do when you saw the form? A. I jumped over the stones and ran down there as fast as I could go.

Q. Did Peters go with you? A. Yes, sir.

Q. Tell exactly what you did when you got there, as well as you can. A. When I got there, I saw that she was dead, and the first thing that I did I told Mr. Peters to go for Dr. Canedy. It occurred to me that he was the medical examiner, and that was the thing to do.

Q. What did you do? Did he go? A. He went immediately.

Q. What did you do? A. I knelt down there by the body, and put my hand on her wrist. I did not touch her body but once. There was a space, perhaps so large [showing], between the top of her glove and her sleeve, and I held my fingers on there to see whether her body was frozen, and I saw it was frozen stiff.

Q. Did you at that time collect yourself enough to see whether there was anything around her in the shape of bundles? A. I saw the bundles when I ran by the bundles before I saw her, or before I reached her body.

Q. Did you take enough notice to see how they were disposed around her? A. Well, they were scattered around promiscuously, not in a line, but one here, and another one there.

Q. How long did you stay? Did you stay till Dr. Canedy came? A. No, I probably did not stay there two minutes by the watch.

Q. Then what did you do? A. I grabbed these bundles and ran to the house to tell my daughter that was left there what had happened. I don't know why I picked them up. I picked them up sort of mechanically.

Q. Have you any recollection now what you picked up? A. I picked up two small paper bundles, a hand-bag and a book.

Q. A book done up, or open? A. It was done up.

Q. A large book, or small? A. Large; that is, it was not a thick book, but it was large.

Q. Before I leave the subject, what did you do with the hand-bag, Mr. Crittenden? A. I carried it up by the house, and as I passed up the main yard by the house I pitched the hand-bag and the bundles onto the piazza floor; I didn't stop at all.

Q. Would you know the hand-bag if you saw it, sir? Perhaps other members of the family may know it better. A. That looks just like it. Of course I couldn't testify there might not be another one that looked just like it.

Q. This, you say, you threw upon the floor of the piazza? A. I did.

Q. If you recollect, were the bundles near the body, or at some distance? A. Well, within a very few feet.

Q. Were they all together, or were they scattered around? A. Well, they were scattered.

Q. One bundle in one place and another in another? A. Yes, sir.

Q. And the hand-bag? A. The hand-bag, as nearly as I can recollect, was a little nearer to her body than the bundles.

Q. Did you examine the hand-bag? A. No, I didn't.

Q. At that time, did you notice anything about the hat? A. I noticed her hat later.

Q. Where? A. Well, it was a few feet above where the bundles were, if I recollect right.

Q. How far from her head? A. I should say it was, well, eight or ten feet.

Q. Which direction from her body? A. Up the hill.

Q. From it? A. Yes.

Q. Then you went home? Well, before I come to that, did you at that time make any special examination of her clothing? A. No.

Q. Did you notice whether she was covered, or not? A. She was covered.

Q. That is, her legs? A. Oh, yes; she was covered and her clothing was in perfect order as far as I could see.

Q. To come back to the house, which daughter did you notify? A. My daughter Viola. She came out as I came up into the doorway.

Q. Did you go back? A. She and I immediately ran back.

Q. Did you run home? A. Yes, sir; I came as near to it as I could.

Q. Then you and she ran back? A. Yes, sir; she and I ran back.

Q. When you got back there, was anybody there? A. No.

Q. Did you see any change there in anything from what it was when you were there before? A. I did not.

Q. What happened after you got back? A. I stayed there till people began to come.

Q. Who first came? A. Three men; I didn't know who they were, because I didn't look at them; but there were three men came up, and one of them asked me what the matter was.

Q. I won't inquire about that. A. And in two or three minutes there were a dozen men there.

Q. Did Mr. Peters come back? A. I don't remember whether he came back, or not.

Q. Did you wait till Dr. Canedy came? A. Yes.

Q. While you were there, Mr. Crittenden, did you take any notice of the leaves about or under her? A. I did of the leaves above her, and the leaves at her feet.

Q. What did you observe about them? A. Well, for two or three feet above her the leaves were matted down as though she had lain on them, or slid along on them, as though she had been shoved along down, and leaves had been pushed along down by her feet.

Q. Did you notice any other things in the nature of disturbance?
A. I didn't notice anything.

Q. Did you see her veil? A. Yes.

Q. Where did you see her veil? A. On a little bush a foot high, perhaps.

Q. How far from her? A. Well, I can't tell, exactly; I should think it was further away than the hat or any of the bundles, a little.

Q. A little bush a foot high? A. I should think it was about a foot high.

Q. Did you do anything with the veil? A. I don't remember as I did. Somebody stooped down to pick it up, and I told him to let things alone till the doctor came.

Q. And you went back to the house when the body did? A. I went ahead of the body, sir.

Q. How long have you lived where you now live? A. Thirty-three years.

Q. Do you use that road usually? A. Oh, yes; always when I go to the village.

Q. Which is the more commonly used by you and your family, that, or the back road? A. Oh, the back road is very seldom used; the back road has been discontinued and closed for twenty years or more.

Q. The more usual way is that road? A. Oh, yes; always.

Q. Do you know the road your daughter used? [Objected to.]

Q. I won't press it. It is not material enough to make a fuss about. Were you there when the jury were there the day before yesterday, Mr. Crittenden? A. I was in the house.

Q. You did not go down? A. No, I didn't.

Q. Well, assuming they were shown about the same spot where the body was found, is there any opening in the wall of the road near that spot, that is, of the Crittenden road? A. No special opening, that I know of. There are loose stones along there; away along down from there there is an open place that leads into a path. There is no regular laid-up wall there any way.

Q. Where does the path go? A. Well, it goes down near where the body was found.

Q. How far below is that opening that you speak of? A. How far below where?

Q. Below a line from the road to the body? A. I don't know; perhaps two or three or four rods.

Q. You say what is there in reference to the stone wall? A. There is an opening there.

Q. When you go through that opening, the course to the body, is there any specific way of going through the opening to the wall to

where the body was found? A. There is a path; a spring there, and path.

Q. How near to where the body was found did that path lead? A. I can't tell; I have never been there since I found the body.

Q. Where does that path begin in the road with reference to the open place in the wall? Does it begin at the open place, or north or south? A. It begins at the open place.

Q. When you went in, you did not follow any such path? A. No; went straight down from the road, as straight as I could go.

Q. Did you see the bundles when you came back again the second time? A. I don't remember.

Q. You don't know what became of them or what was done with them? A. I didn't see them picked up, that I remember.

Q. How old was your daughter? A. Thirty-seven years old.

Q. Good health? A. Her health was fairly good. She was not strong. Health was fairly good.

Q. Not strong? A. Not strong; she didn't do any hard work.

Q. Did she have any profession? [Objected to.]

Mr. KNOWLTON. That, we think, will be competent by and by in reference to some acts of hers the same night she died.

SHELDON, J. I don't think it is competent now.

Q. (by Mr. KNOWLTON). Can you tell exactly where you put the bundles? A. No, not exactly; I gave them a throw. I was in a hurry; gave them a throw on the floor. The floor is up a couple of feet from the ground.

Q. Floor of the piazza? A. Yes, sir.

Q. That piazza is the same now as it was then? A. Yes, sir.

Q. The jury saw it? Is it on the east side of the house? A. East or south-east. The house doesn't stand north and south.

Q. The door that leads into that is a side door of your house? A. Yes, sir.

Q. You go across the piazza into the east door of the house? A. Yes, sir.

Q. Was it on the piazza you threw the bundle somewhere? A. Yes, sir.

Q. Near the door, or road? A. Near the door.

Q. You said you were owing her money at that time? A. Yes.

Q. You know anything about whether she had any money in her possession at that time? [Objected to.]

SHELDON, J. If the witness knows about it, his knowledge is competent. This was the Thursday before the homicide.

Q. (by Mr. KNOWLTON). At the time of the paying of the checks? A. All I know is what she said to me.

Mr. KNOWLTON. I offer that, as tending to show that she had no money. [Objected to.]

SHELDON, J. I don't see how it is competent.

[Cross-examination waived.]

LUCELIA E. CRITTENDEN — *sworn*.

Q. (by Mr. KNOWLTON). Mrs. Crittenden, what is your whole name, please? A. Lucelia E. Crittenden.

Q. You didn't go down to the woods that morning? A. No, sir.

Q. You drove to the village? A. I drove to the village.

Q. Of course it is not necessary to ask you, — you did not see the body as you drove by? A. No, sir.

Q. Whom were you with? A. With my daughter.

Q. Which daughter was that, please? A. Lillian.

Q. You had then missed your daughter? A. Yes, sir.

Q. And perhaps became somewhat alarmed? A. A little.

Q. And when did you return? A. Well, in the course of ten or fifteen minutes.

Q. You heard the news down street, perhaps? A. Well, can I tell it as it was?

Q. Well, simply whether you heard the news, that is all. A. Not until I had passed through and was returning back.

Q. And when you came back, had the body been removed to the house? A. No, sir; I drove by the place.

Q. You did not go down? A. No, sir; we went right by the place.

Q. When you got to the house, did you have your attention called to any bundles on the piazza? A. Yes, sir; as I passed by I noticed some, and, as was my wont, carried them in as I went in.

Q. Did you examine them then, or afterwards? A. I didn't examine them at the time. I passed through the house to the kitchen, and laid them all on the table.

Q. And did you afterwards examine them? A. Not until just before going into the room where Dr. Canedy was with the body.

Q. And did you then examine them? A. I did in his presence.

Q. The same ones that you brought in from the piazza? A. Yes, sir; the same bag and all that was in it.

Q. Tell the contents of them. A. Yes, sir; all that was in the bag.

Q. What was in the bag? A. In the top of the bag was a little paper bag with two little lemons or oranges, I couldn't say which, which I noticed, and the handkerchief, and then the purse at the bottom of the bag.

Q. Wait just a minute. A. I reached my hand in, looking for the purse, thinking it might be there, because I thought she would have it there.

Q. Did you find it there? A. I found the purse there.

Q. You say you found a paper bag with two little lemons or oranges in it? A. Yes, sir.

Q. Any other packages in the bag? A. No other packages in the bag.

Q. And you also found the purse in the bag? A. I found the purse.

Q. Do you know the bag, Mrs. Crittenden? A. Yes, sir.

Q. Tell whether that [producing bag] is the bag, or not. A. Yes, sir; I should say it was.

Q. That is the same one that was on the piazza? A. Yes, sir. The upper part was out, in the way I show you. It was like this, partly open, like that.

Q. Oh, that is the way it was? A. Yes, sir.

Q. And you took out the oranges or lemons, whichever they were? A. I left them in there.

Q. And took out the purse? A. I took the purse out in the presence of Dr. Canedy. He was in the presence of the body.

Q. Did you examine the contents of the purse? A. Yes, sir; I called his attention to it, and opened the purse, and told him I wished that he should see it first.

Q. Is that [producing purse] the purse? A. Yes, sir; that is the purse.

Q. What did you find in it in the way of money? A. I found a five-cent piece and two or three pennies, besides the five-cent piece. That is all the money there was in it.

Q. Were all those papers that are now in the bag then in the purse, if you know? A. Yes, sir; I didn't look at the papers at all, only I examined to see if there were any bills.

Q. Did you notice whether there was any check in the purse then? A. I noticed folded papers that might look like a check; I didn't look at them.

Q. You did not examine them? A. No, sir.

Q. Was there any loose money in the bag outside of — A. I didn't find any; I didn't look for it.

Q. That, then, was all the money that you found? A. That was all the money that I found; yes, sir.

Mr. KNOWLTON. I now offer that purse and that bag. So far as I know, the present contents are without significance.

Q. What was in the other bundles? A. Cookies.

Q. Can you tell what kind of cookies? A. Well, I don't know as

I know the name of them, only I should say one was Graham wafers, and the other a large sweet cooky, round ones.

Q. How many of each, or didn't you pay attention? A. I should think there was half a pound of one and — well, of each, I should say.

Q. Were they broken? A. In one bag they were not broken at all.

Q. Which one was that? A. That was the large cookies.

Q. What kind were they? A. They were sugar cookies, I should call them, round, — came from the bakery.

Q. Hard cookies? A. Not very hard; no. The other kind were the kind that would crumble.

Q. They were the Graham wafers? A. Yes, sir.

Q. And they were brittle? A. They were brittle.

Q. Were the others brittle? A. They were not.

Q. Was there any other package besides the cookies? A. There was a book.

Q. How large a book is that? Perhaps it is here. A. Yes, sir.

Q. Is that it? A. Yes, sir, that is it.

Q. "The Heart of Europe?" A. That is the book; yes, sir.

Q. Done up in a paper something like that? A. Yes, sir.

Mr. KNOWLTON. I offer that, too.

Q. You did not preserve the food, I suppose, — the cookies you did not preserve? A. No, sir.

Q. Nor the oranges? A. The oranges afterwards decayed and were thrown away.

Q. Was there any other book besides the large one in the bag? A. I didn't see any; no, sir. There might have been, slipped in at the side of the bag, that I might not have noticed. I couldn't say as to that.

Q. You saw the body, of course? A. Yes, sir; I went into the room when Dr. Canedy was in there; he closed the door. There was no one else in there, and I took the bag on my arm, with the purse in it, and he took the bag and examined it.

Q. Did you remove anything from the body? A. No, sir.

Q. At any time? A. No, sir.

Q. From the fingers? A. No, sir.

Q. Did you do anything about the rings? A. The undertaker, or the man that laid her out, took the two rings from her finger, and brought them to me and I preserved them.

Q. Oh, yes; I thought you took them yourself. When did you last see her alive? A. Well, it was between 4 and 5 Friday evening between 4 and 5; I couldn't tell exactly.

Q. Where was that? A. She came into our house.

Q. Dressed for going out? A. No, sir; she wasn't then.

Q. And did you see where she went to from there? A. No, sir; I didn't see her, but she went up home and did arrange and go.

Q. Well, that you didn't see? A. No, I didn't see it.

Q. Did you even see that she went home? A. From our house?

Q. Yes. A. Well, I couldn't say I noticed her as she went, but I couldn't recall it.

Mr. KNOWLTON. That is all.

Mr. BEER. We do not wish to ask any questions.

Mr. PARKHURST. That is all.

VIOLA CRITTENDEN — *sworn*.

Q. (by Mr. KNOWLTON). Viola Crittenden? A. Yes, sir.

Q. You were a sister of Mrs. McCloud? A. Yes, sir.

Q. You live with your father? A. Yes, sir.

Q. You are a school teacher? A. Yes, sir.

Q. When did you first learn, Miss Crittenden, that your sister was missing? A. On Saturday morning.

Q. Do you remember what time? A. No, sir; I can't tell exactly.

Q. After breakfast? A. Yes, sir.

Q. And the early part of the forenoon? A. Yes, sir.

Q. When had you last seen her? A. On Thursday night.

Q. Thursday night? A. Yes, sir.

Q. You didn't see her on Friday at all? A. No, sir.

Q. Where was she when you saw her on Thursday? A. She was at my home.

Q. Was that the time her father paid her the money or the checks?

A. No, sir.

Q. Some other visit? A. Yes, sir.

Q. You went down with your mother in the team to the village?

A. No, sir.

Q. Now, were you there when your father and Mr. Peters went down? A. Yes, sir.

Q. Could you give any idea how long it was before they came back?

A. It was only a very few minutes, perhaps ten minutes.

Q. And did they come back rapidly? A. My father came back; Mr. Peters didn't come back.

Q. And informed you of your sister's death, I suppose? A. Yes, sir.

Q. Then what did you do? A. I went with him.

Q. And that is the first you knew of it? A. Yes, sir.

Q. You went down to the spot? A. Yes, sir.

Q. And did you take any particular observation of the condition

of things where your sister was, at that time? A. No, sir; not very much.

Q. Did you notice anything about the clothing? A. Somewhat; yes, sir.

Q. What did you notice about the clothing? A. I noticed the veil and hat.

Q. Where were the veil and hat? A. They were above her head.

Q. Were the veil and hat together, or separated from each other? A. Separated.

Q. Was the veil farther away than the hat from the head? A. No, sir; not that I remember.

Q. How far were the veil and hat from each other? A. A yard, perhaps.

Q. And how far was the hat, so far as you can judge, from the head? Illustrate by anything around here, if you want to, or by yards, if you can. A. Three yards, perhaps.

Q. Was it as far away as this gentleman [indicating Mr. Parkhurst] is from you, or less? A. About the same; I should think a little less.

Q. Yes; perhaps there [indicating side of table nearest to witness], somewhere? A. Yes, sir.

Q. Which direction from her head was her hat? A. Directly toward the road.

Q. And the veil was on this side? A. No, sir; it was right down there.

Q. Oh, down there [indicating]? A. Yes, sir.

Q. Was it on the ground? A. Yes, sir.

Q. Did you do anything with it? A. No, sir.

Q. Did you do anything with the hat? A. No, sir.

Q. Did you stay there until the other people came? A. No, sir.

Q. Did you go right back? A. Yes, sir.

Q. You went back before your father? A. Yes, sir.

Q. Did you see the people coming when you went away? A. Yes, sir.

Q. Whom? A. I can't tell you whom.

Q. Mr. Mallory said he saw somebody going away; I don't know whether you know him? A. Well, I was too far away.

Q. Did you carry anything up to the house when you went back? A. No, sir.

Q. Your mother was not there when you got back? A. No, sir.

Q. Did you see the bundles, or do anything with them? A. No, sir.

Q. Did you see them? A. I didn't notice them.

Q. When the body was found, were there gloves on the hands?

A. I couldn't say.

Q. Did you take any notice of the leaves around her? A. No, sir.

Q. Or her clothing, to see whether it was disarranged, any part of it? A. No, sir.

Mr. KNOWLTON. That is all.

Mr. PARKHURST. That is all, Miss Crittenden.

ALICE CRITTENDEN — *sworn*.

Q. (by Mr. KNOWLTON). Your name is Lottie Crittenden? A. Alice.

Q. Alice Crittenden. Are you the one that went down town with your mother? A. No, sir.

Q. Were you living at home at the time? A. No, sir.

Q. Where were you living? A. I was in the village.

Q. Oh, yes; and you lived down at the village? A. Yes, sir.

Q. When did you first hear of your sister's death? A. Do you mean what time in the day?

Q. Yes. A. I don't know just what time it was.

Q. Was it in the morning? A. Yes, sir.

Q. And what did you do? A. I went up the hill.

Q. And where did you find the body of your sister? A. I didn't find it.

Q. Well, you saw it at the house, perhaps? A. Not at that time.

Q. Oh, yes. What did you do? A. After I reached the house?

Q. Yes. A. I sat down in the sitting room.

Q. I beg pardon? A. I sat down in the sitting room.

Q. When did you see your sister alive last? A. The night before.

Q. What night was that? A. It was Saturday morning she was found in the woods; it was Friday night that I saw her.

Q. What time, please? A. It was somewhere before 4 o'clock.

Q. Where was she then? A. In her house.

Q. Her house. Were you there? A. I was.

Q. And did you see her go away? A. I did not.

Q. Did you see her put on her outer clothes to go away? A. No, sir.

Q. Where were you when she went away? A. I went away before she did.

Q. Went down street? A. Yes, sir.

Q. You went away what time? A. I don't know just the time.

Q. When you left the house, was anybody left besides Alberta and her mother, that you know of? A. No, sir.

Q. You left them alone at that time, and you went off down street. Did you see anything of her bag at that time? A. I did not.

Q. Have you been at the house often? A. Yes, sir.

Q. Did you ever see where she kept her bag? A. Yes, sir.

Q. Where? A. In the hall, usually.

Q. Hanging up on a nail, or on a chair or something? A. It was hanging up.

Q. And was that where she usually kept her bag, in the hall? A. Yes, sir.

Q. Is that the front hall? A. Yes, sir.

Q. And where did she keep her purse? A. She kept her purse in her bag.

Q. In the same bag? A. Yes.

Q. A bag like this, — it is identified as being her bag? A. Yes.

Q. Do you happen to know whether the bag was in the house when you left that afternoon, or not? A. I do not.

Q. You didn't notice it, then. Did you make any search of her house afterwards, after she died? A. I helped to.

Q. And did you make any search with reference to money? A. No, sir.

Q. Did you find any money? A. No, sir.

Q. Did you look for money? A. No, sir.

Q. What were you looking for? A. We were looking to put away things in order.

Q. And how thorough an examination of the house did you make at that time? A. I had but very little to do with it.

Q. Who did do it? A. My sister, Viola.

Mr. KNOWLTON. Oh, the one just on the stand. I shall have to have her recalled.

[No cross-examination.]

VIOLA CRITTENDEN — *recalled*.

Q. (by Mr. KNOWLTON). One question I omitted to ask you, Miss Crittenden. Did you examine or look through Hattie's house after she died? A. Yes, sir.

Q. How much of a search did you make there? A. A very thorough one.

Q. Look through the bureau drawers, and all through such places as that? A. Yes, sir.

Q. Did you find any money in the house? [Objected to.]

Q. How soon after you found her dead did you search the house? A. Right along after.

Q. The same day? A. The next day; we searched for money the next day.

Q. Sunday? A. Yes, sir; not Saturday, but Sunday.

Q. Then you did search for money then? A. Yes, sir.

Q. You need not answer this. I will ask whether you found any?

SHELDON, J. Do you object to it? [No reply.] You may put the question.

[Defendant excepts.]

Q. Did you find any money in the house? A. Yes, sir.

Q. What? A. A very few cents.

Q. Can you tell approximately how many? A. Three or four, perhaps.

Q. Where did you find them? A. In a small cup on the top of the sideboard.

Q. That is all the money you found in the house? A. Yes, sir.

Cross-examination.

Q. (by Mr. BEER). Did Alberta come to your house on Friday night? A. Yes, sir.

Q. What time? A. Between 6 and 7, I think.

Q. Do you know whether she had been remaining in the house alone until that time? A. Yes, sir; I think she had.

Q. And it was dark at that time, wasn't it? A. Not very; no, sir.

Q. How long did she remain in your house before either you or any member of the family went to the house? A. Only a few minutes.

Q. Did you go there yourself? A. Yes, sir.

Q. On Friday night? A. Yes, sir.

Q. How long did you stay there? A. I stayed until 10 o'clock.

Q. In the house? A. Yes, sir.

Q. Did you find any one in the house when you went there? A. Yes, sir.

Q. Who was it? A. Frank Turton.

Q. The doors were open then, were they? A. Yes, sir.

Q. In settling the house, when did you begin to do that? A. Well, I don't understand exactly what you mean by settling the house.

Q. Did you put the things in order for the winter in your sister's house? A. Yes, sir; but not immediately then.

Q. When did you commence that? A. Along the next week.

A. Where after 10 o'clock did you and Alberta go? A. Home to our house.

Q. Any one left in the house there? A. There was no one up at the time; they were all in bed.

Q. There was no one in the house all that night? A. In Alberta's home, no, sir.

Q. Until what time of the day do you know whether any one entered that house? A. In the morning, before breakfast.

Q. Were the doors locked? A. Yes, sir.

- Q. At what time? A. When I left, the night before, I locked them.
Q. At ten o'clock? A. Yes, sir.
Q. What time did Frank Turton go home? A. At that time, about 10 o'clock.

ALBERTA McCLOUD — *sworn*.

Q. (by Mr. KNOWLTON). Alberta McCLOUD is your name? A. Yes, sir.

- Q. How old are you, Alberta? A. Ten years old.
Q. And did you live with your mother? A. Yes, sir.
Q. The night when she went away, were you at home? A. Yes, sir.

- Q. You know what time of the night it was? A. I don't remember.
Q. Was it light, or dark? A. Dark.
Q. Had she been over before she went to your grandfather's, Mr. Crittenden's, or don't you know? A. I don't know.

Q. When she went away, whom did she leave at the house; anybody but you? A. That is all.

- Q. Did she eat supper before she went? A. Yes, sir.
Q. She ate supper? A. Yes, sir.
Q. Did you eat supper before she went? A. I don't remember.
Q. Did you eat supper, or did you not eat supper? A. I did eat supper.

- Q. Did your mother eat supper before she went? A. Yes, sir.
Q. What did she have for supper? A. I don't remember.
Q. Did you and she eat supper together? A. Yes, sir.
Q. What was it you had? A. I don't remember.
Q. Did your mother put on her outside wrap when she went out?
A. I don't remember.

- Q. Take her bag? A. I don't remember.
Q. Did anybody come there after your mother went off? A. Yes, sir.

- Q. Who? A. Frank Turton.
Q. How long did he stay? A. He stayed quite a while.
Q. Well, haven't you said your mother did not eat supper before she went away? A. She did.

Q. Haven't you said to other people your mother did not eat any supper before she went off? A. I don't remember.

- Q. Didn't you tell your grandfather so? A. I don't remember.
Q. Didn't you tell Mr. Greene your mother didn't eat any supper?
[Objected to.]

SHELDON, J. If the purpose is to contradict the testimony of the witness, it may be done by calling her attention to the specific occasion and time of making any such statement. These questions seem to be for that purpose. Aren't they for that purpose?

Mr. KNOWLTON. Yes, sir; and partly to refresh her memory, too. Of course that is also legitimate.

Q. Do you remember walking down with Mr. Greene last Saturday, — down the hill? A. Yes, sir.

Q. And talking with Mr. Greene about that night when your mother went away? A. Yes, sir.

Q. Don't you remember you told Mr. Greene your mother did not eat supper? A. Yes, sir; but I found out that she did.

Q. Whom did you find it out from? A. My aunt Viola.

Q. Your aunt Viola? A. Yes, sir.

Q. You didn't see her eat any supper yourself, then? A. I don't remember whether I did, or not.

Q. Don't you remember telling Mr. Greene your mother set out your supper? A. Yes, sir.

Q. You didn't eat it before she went away? A. I don't remember.

Q. Don't you remember telling Mr. Greene she set out your supper for you to eat after she had gone away? Don't you remember that? [No answer.]

Q. You say you learned from your aunt Viola she did eat supper before she went? A. Yes, sir.

Q. You didn't see her eat supper yourself? A. I don't remember.

Q. Don't you remember telling Mr. Greene she did not eat supper before she went, when you were walking down the hill with him last Saturday? A. No, sir.

Q. Don't remember telling him that? A. No, sir.

Q. Are you sure you did not? A. Yes, sir.

Q. Well, did your mother say when she was coming back? [Objected to.]

SHELDON, J. How is that competent?

Mr. KNOWLTON. It seems to us competent, since Mrs. McCloud is dead. It is not a fact that in any way incriminates this man, but we have to show something of her movements, and if I start out from home and say I am going to the station, and there is no opportunity for connivance or collusion, it is part of the *res gestæ*, and proper to be put in. If I say I am going off with Mr. Hammond at 6 o'clock, it is not declaration, but *res gestæ* of the departure.

SHELDON, J. Why isn't it governed by the decision in the . . . case? Why does not that make it competent?

Mr. PARKHURST. It does not seem to me that the declarations of the deceased as to what her intention was as to coming back, the time when she intended to come back, is competent or material upon the issue of this case.

SHELDON, J. If it is competent at all, it is only competent to show her state of mind, doubtless, — her intention.

Mr. PARKHURST. She may have declared an intention, but it seems to me that the intention must be discovered from her acts, and cannot be gathered from her declarations, as binding this defendant, who was not a party to them in any way. It seems to me it would be very unsafe to accept evidence of her declarations upon any question that might be taken as evidence against this defendant when he was not present. Her acts are something that we cannot control, but her declarations are something aside from her acts, and they are introduced here for a purpose, and that purpose is to affect the defendant. I suggest to the consideration of your Honors that her declaration in respect to her intentions as to when she would come back is of no consequence as against this defendant. It could not but argue against him for any purpose, and therefore is not admissible.

SHELDON, J. The court does not feel at present inclined to admit this question. If the prosecution should deem it material hereafter, it may be renewed.

Mr. KNOWLTON. That is all.

Mr. PARKHURST. That is all.

FRANK TURTON — *sworn*.

Q. (by Mr. KNOWLTON). Frank Turton is your name? A. Yes, sir.

Q. And you live in Shelburne Falls? A. Yes, sir.

Q. You knew Mrs. McCloud? A. Yes, sir.

Q. Did you have any business relations with her? A. Yes, sir.

Q. What were they?

Mr. BEER. We object.

Q. Well, I will put it directly. Did you take music lessons of her? A. Yes, sir.

Q. That is all I require. Where? A. At her home.

Q. Were you at her house the evening before she was found the next morning? A. Yes, sir.

Q. What time did you go there? A. I don't know.

Q. I beg pardon? A. I don't know.

Q. Had you made any arrangements with her about being there that evening? A. What evening, Friday evening?

Q. Yes. A. Yes, sir.

Q. When did you make the arrangements? A. I don't know.

Q. Well, some time before that? A. Yes, sir.

Mr. KNOWLTON. And perhaps you better not answer — well, it is rather hard to instruct the boy about that. I now offer to show, if your Honors please, on slightly different grounds from the other, as it seems to me, that an arrangement had previously been made for a designated hour to meet her there. I take the precaution to state

it to the court, so I sha'n't get any incautious answers from the witness, not that I doubt its competency.

Mr. PARKHURST. The defence object to any agreement or any statement —

Mr. KNOWLTON. Appointment, perhaps, is more accurate.

Mr. PARKHURST. Appointment as to time, that was not known by the defendant.

Mr. KNOWLTON. We don't claim it was known by the defendant.

SHELDON, J. Do you want anything more, Mr. Attorney, than to show that the witness was there by appointment with Mrs. McCloud?

Mr. KNOWLTON. I don't know as he kept his appointment. I want to show that he had an appointment to meet her there.

SHELDON, J. If you want the bare fact simply, that he went there by an appointment —

Mr. PARKHURST. We don't object to that.

SHELDON, J. Of course there is no objection to that.

Q. Did you go there by appointment that evening? A. I always went Friday evening.

Q. Well, was that by appointment with her? A. Yes, sir.

Q. At what time?

Mr. PARKHURST. I object.

THE WITNESS. When I first started to take —

SHELDON, J. You mean time of the regular appointment?

Mr. KNOWLTON. Yes, the time of the regular appointment to go there; that is what I am getting at.

SHELDON, J. The court does not think that is competent.

Mr. KNOWLTON. I beg your Honor's pardon?

SHELDON, J. The court does not think that is competent.

Q. Do you know what time you did get there? A. When, Friday evening?

Q. Yes. A. About half-past 6.

Q. And how long did you stay there? A. Till 10 o'clock.

Q. Mrs. McCloud did not come back? A. No, sir.

Q. Did you go out looking for her? A. Yes, sir.

Q. Alone? A. No, sir.

Q. With whom? A. Alberta.

Q. And what time did you go out looking for her? A. Oh, probably quarter of 7.

Q. You went out looking for her at quarter of 7. How far did you go? A. Where the roads meet.

Q. That is, the back road and the regular road, you mean right there near the house? A. Yes, sir.

Q. And then what did you do? After you went out to meet her, did you go back to the house again? A. Yes, sir.

Q. And stayed until 10 o'clock? A. Yes, sir.

Q. Then you went home? A. Yes, sir.

Q. Did you go before the time of your appointment, or later than the time of your appointment? A. Before the time.

Mr. PARKHURST. We object.

SHELDON, J. At what time he went is competent.

Mr. KNOWLTON. Half-past 6.

SHELDON J. But the time of the appointment has already been ruled out.

Mr. KNOWLTON. Yes, but it is admissible that he went there on an appointment with her.

SHELDON, J. Yes, sir.

Mr. KNOWLTON. It is certainly, or ought to be, competent for him to say that he went there before the time of the appointment.

SHELDON, J. Well, that is only an indirect way of showing what the time of the appointment was.

Mr. KNOWLTON. I might argue that that showed the inconsistency of the court's position. However, I shall have to leave it where it is. That is all, sir.

ALBERTA McCLOUD — *recalled*.

Q. (by Mr. KNOWLTON). Alberta, do you remember telling your Aunt Viola about that evening, say a day or two after, when your mother didn't come back? A. No, sir.

Q. Do you remember telling your Aunt Viola that your mother set you out your supper, and did not eat her own, but went away without eating supper? A. No, sir.

Q. Don't remember telling her that? A. No, sir.

Q. At any time? A. No, sir.

Q. Do you remember telling that to your Aunt Alice? A. No, sir.

Q. Did you say anything about your mother eating supper or not eating supper to either your Aunt Viola or your Aunt Alice? A. I don't remember.

[No cross-examination.]

VIOLA CRITTENDEN — *recalled*.

Q. (by Mr. KNOWLTON). Miss Viola, did you talk with Alberta about her mother after her death? A. Yes, sir; I have a little.

Q. About her mother's movements that night? A. Yes, sir. [Objected to.]

SHELDON, J. This is competent to contradict the testimony of Alberta.

Mr. BEER. It does not appear for what purpose it is introduced. If that is the purpose, we cannot object.

Q. (by Mr. KNOWLTON). Did Alberta say anything to you about whether her mother had eaten her supper before she went away that night? A. No, sir.

Q. Didn't she say a word about it? A. Yes, sir; about a month afterwards.

Q. What did she say? A. She said her mother had not eaten supper.

Q. You asked her? A. Yes, sir.

Q. Were you present when she talked with Mr. Greene? A. Yes, sir.

Q. Last Saturday? A. Yes, sir.

Q. Walking down the hill? A. Yes, sir.

Q. Do you remember her telling Mr. Greene anything about her mother's eating supper, or not? A. Yes, sir.

Q. What did she tell Mr. Greene? A. That she had not eaten her supper.

[No cross-examination.]

CARRIE E. WINTERHALDER — *sworn*.

Q. (by Mr. HAMMOND). How were you employed on Thursday, the day before Mrs. McCloud's death? A. I was employed in Mr. Amsden's store, — Fred H. Amsden's store.

Q. Where is that, on the Shelburne side? A. Yes, sir.

Q. Whether or not you saw Mrs. McCloud at any time Thursday? A. No, sir.

Q. When did you, either on Thursday or Friday, if at all, see Mrs. McCloud? A. Friday.

Q. And what time on Friday? A. Between 5 and 6.

Q. And where did you see her? A. At Mr. Amsden's store.

Q. What, if anything, did she do there? A. I didn't wait on Mrs. McCloud.

Q. What did you see of her movements? A. I saw her as she stood there. I talked with her.

Q. Did you see her having anything in her hand? A. No, sir; I don't remember seeing anything in her hand.

Q. Whether or not seeing a bundle of this size [showing] refreshes your recollection at all? A. No, sir.

Q. And about what time did you see her? A. Well, between 5 and 6.

Q. Do you recollect the time of her going out? A. Yes, sir.

Q. Whether or not you had conversation with her? A. Yes, sir.

Q. Did you observe how Mrs. McCloud was dressed at the time she was in the store? A. Yes, sir.

Q. And will you state as to her hat? A. Yes, sir; she had a large green hat on, trimmed with feathers.

Q. Whether or not you can identify the hat? A. Yes, sir.

Q. What do you say as to this one [showing]? A. That is the hat.

Q. As to the cloak? A. She had a double cape, rough.

Q. Whether or not you can identify the cape? A. Yes, sir.

Q. Is that [showing] the cape? A. Yes, sir.

Q. Whether or not she had a veil? A. Yes, sir.

Q. Describe how she wore it? A. She had it tied over her hat with a heavy mesh.

Q. Whether or not you identify that [showing]? A. Yes, sir.

[No cross-examination.]

EFFIE WOODWARD — *sworn*.

Q. (by Mr. HAMMOND). Miss Woodward, how were you employed on Thursday, January 7? A. In the store of Mr. Amsden.

Q. Whether or not you saw Mrs. McCloud that day? A. Yes, sir.

Q. What time? A. I should think she came to the store about half-past 3.

Q. Whether or not she did anything in your store at that time? A. She wanted to pay her bill and have a check cashed.

Mr. BEER. If this is the same occurrence, we object.

SHELDON, J. The evidence will be admitted, and your exception will be saved.

Q. (by Mr. HAMMOND). Go on and state what occurred. What did she do as she was there? A. I did not have the money in the drawer that I wanted to spare, and I asked her to wait until Mr. Amsden returned. He was out. He had gone to the station to meet Mr. Tuck. She waited until Mr. Amsden came back. She was not in the store all the time. She went out once or twice on the street, and done some errands. She came back, and when Mr. Amsden came back, he went to Mr. Halligan's store and got the money for the check, and paid her.

Q. State what you observed of the transaction in cashing the check. A. I observed very little. I was otherwise engaged at the time he paid over the money. I stood within a few yards of them, and I spoke to Mrs. McCloud in a friendly way about the money — [Objected to.]

Q. Whether or not you observed what money she took? A. No, sir; I did not.

Q. Whether or not you were in a position where you could see the bills she took? A. I could, if I had paid attention.

Q. Whether you know? A. I do not.

Q. Whether or not you saw Mr. Tuck there? A. Yes, sir.

Q. Whether or not he was in conversation with Mrs McCloud at any time? A. Yes, sir.

Q. During what time was the conversation between Mrs. McCloud and Mr. Tuck? A. I think he came in about a quarter-past four, and stayed there until half-past 4, perhaps. During that time.

[No cross-examination.]

FREDERICK H. AMSDEN — *sworn*.

Q. (by Mr. HAMMOND). You are the proprietor of a dry goods store on the Shelburne side of Shelburne Falls? A. I am, sir.

Q. Whether or not you knew Mrs. McCloud in her life time? A. I did.

Q. How long had you known her? A. Five or six years.

Q. Whether or not she was at your store on Thursday, January 7? A. She was.

Q. And what time did you first see her? A. About a quarter-past 4, 4.10, somewhere in there.

Q. State the circumstances. A. Well, I was at the station at 4 o'clock, and I walked from there to the store, and she was there when I reached the store.

Q. Whether any one was with you? A. Yes, sir.

Q. Who? A. Mr. Tuck from Gloucester. He was a gentleman to give a reading there that night, so I — that is the means why I was at the station to meet him.

Q. Did he go into the store with you? A. He did.

Q. State what occurred. A. Well, the first thing on entering the store, we found Mrs. McCloud there; she was there to pay a bill. The first thing done was to introduce Mr. Tuck to Mrs. McCloud; also to one of my clerks at the same time. And she gave me these checks.

Q. Will you look at them?

Mr. KNOWLTON. They are the ones already offered, marked B and C.

A. Yes, sir; I recognize both checks.

Q. Whether or not they are the checks she handed to you? A. Yes, sir.

Q. Go on and state what you did in that connection. A. She handed the two checks, and she says, "I want you should have the smaller check." She handed out both, the largest one first. She says, "I want you to have the smallest check." So I took the smallest check, \$39.60.

Mr. KNOWLTON. The one marked B.

THE WITNESS. And I said I would have to take —

MR. PARKHURST. Wait a moment.

Q. If they object to what you said, state what you did. A. Well, I took the check.

Q. Did you cash it out of your own drawer? A. No, sir.

Q. State what you did. A. I took the check to the next door, to get it cashed, into Mr. Halligan's. It was inconvenient for me to cash the check at the time, so I took it to the next door and received the money. I received \$32.60, and came back with the money and counted it out to her. She says, "You have made a mistake," she says, "that check —"

MR. PARKHURST. We object.

Q. Whether or not she called your attention to any mistake? A. She did.

Q. What was the mistake to which your attention was called? A. The check, she said was for \$39.

Q. Well, what you observed, — you may state what you observed, leaving out what she said. Whether or not you went back to Halligan's? A. I went back to Halligan's.

Q. Did you see the check as you went back there? A. Yes, sir.

Q. Did you observe then its true amount? A. I did.

Q. And what was its true amount? A. Thirty-nine dollars and sixty cents.

Q. Whether or not you got the correct money? A. I did.

Q. How much? A. I got \$7 in money.

Q. And went back with it? A. And went back with it.

Q. Then what did you do with Mrs. McCloud? A. I took out the amount of her bill.

Q. What was that? A. Sixteen dollars and fifty-three cents. The original bill — I want to tell you one thing — the original bill was for \$18.02. She brought a little bundle back, \$1.49, which I deducted from the amount, which left it \$16.53.

Q. And that was the amount you deducted from her check? A. Yes, sir.

Q. And whether or not you gave her the balance? A. I gave her the balance.

Q. And in what form did she take the \$23.07? A. She took it in bills.

Q. Well, state in what. A. She received a ten-dollar bill. She received \$23.07, — that was what I paid her.

Q. Whether or not there was a ten-dollar bill in it? A. There was.

Q. And can you state particularly what the other consisted of? A. Well, there was about \$12 of this silver. She made the remark

she didn't want the silver, and she wanted I should take that, and so I did.

Q. Let me ask you whether the \$12 was a part of the \$39.60? A. What is that?

Q. The \$12 in silver you got at Halligan's. A. Yes, sir; that was part of the \$39.60.

Q. What was the other part of the \$39.60 beside the silver? A. I should say a ten, two fives and the rest in small bills.

Q. And what denomination of money did you take to pay your bill? A. I took the silver and the balance in bills.

Q. And what bills did she have left, or, the \$23.07 was in what denomination? A. There was a ten, two fives and the rest in bills.

Q. The rest in — A. I couldn't say whether I took a five with the \$12 in silver, or whether I took it in bills; but I am sure there were two fives with the ten.

Q. A ten and two fives? A. Yes, sir.

Q. And you cannot give the particular denomination of the \$3.07? A. No, sir.

Q. Whether she had any other errand in your store on that day?

Mr. BEER. We object to that.

Q. Whether she transacted any other business there on that day that you recollect? A. I don't recollect that she transacted any other business.

Q. Whether or not she was in your store on Friday? A. She was.

Q. At about what time? A. At about 5.30, somewhere in that neighborhood.

Q. And do you know whether she had any errand there? A. She had an errand.

Q. And what was the errand? A. To exchange a book.

Q. And whether or not she did make the exchange? A. She did.

Q. Whether or not you could identify the book she took away on that day? A. I could [looking at book shown him by Mr. Knowlton]. That is the very book.

Mr. KNOWLTON. "Heart of Europe" is the name. We put that in.

Q. (by Mr. KNOWLTON). That is, she took that book? A. She did.

Q. (by Mr. HAMMOND). Whether or not she made known the reason of the exchange? A. She did.

Q. If it is not objected to, you may give it?

Mr. PARKHURST. It is.

SHELDON, J. Well, it is not competent.

Mr. HAMMOND. Not if it is objected to.

Q. Can you state about what time she left your store? A. I should say about twenty minutes of 6.

Q. On Friday? A. On Friday.

Q. Whether or not you ever saw her again alive? A. I did not.

Q. Whether or not she had any articles with her, — have a shopping bag? A. She had a shopping bag with her.

Q. And do you recollect as to anything else? A. No, sir.

Q. (by Mr. KNOWLTON). Your store is on the Shelburne side?
A. Yes, sir.

Q. [Indicating on map.] Over in here? A. Yes, sir.

Mr. PARKHURST. Is that by Ward's corner?

Mr. KNOWLTON. No, it is Amsden, — right there [indicating].

Q. On the corner? A. Right there.

Mr. KNOWLTON. This is it. It is in that block, anyhow.

Q. The second store in that block? A. Yes, sir.

Mr. PARKHURST. Next to the bank?

Mr. KNOWLTON. Next to the bank.

Cross-examination.

Q. (by Mr. DOWLIN). I understand you to say Mrs. McCloud was in your store about 5.30 Friday? A. About 5.30 Friday.

Q. What business did she transact in your store Friday? State it all, please. A. She came in there to exchange a book.

Q. Is that all that she did in your store? A. No, sir.

Q. Will you state all that was done? A. She made another purchase.

Q. What was that? A. A small book.

Q. Did she have this shopping bag in her hand that day? A. I should say that was the very bag.

Q. Did she open the shopping bag in your presence in the store that day? A. I don't remember.

Q. Did she take anything out of the shopping bag? A. I don't remember; I couldn't say.

Q. Did she pay you any money that day? A. Not a cent.

Q. How much was the value of the purchase that was made Friday afternoon? A. Fifteen cents.

Q. You charged that? A. I did.

Mr. DOWLIN. That is all.

Q. (by Mr. HAMMOND). Whether or not you can identify the book? A. I could [looking at book shown him by Mr. Knowlton]. Yes, sir, that is the very book.

Mr. KNOWLTON. I put that in, too. The name of it is "Oriana."

Q. Any money pass from her to you in connection with that book?
A. Not a cent.

Mr. HAMMOND. That is all.

Mr. DOWLIN. Just a moment.

Q. (by Mr. DOWLIN). That is the book, is it? A. Yes, sir.

Q. Do you have your trade-mark in your books? A. Yes, sir.

Q. Do you sell your goods according to your trade-mark? A. Do I? Not at that season of the year; no, sir.

Q. Reduction, was it? A. Yes, sir. This was holiday goods, we consider it. After Christmas, we make a reduction.

Q. What is the amount of the reduction? A. I should say — the price of that book is twenty-five cents; I think I sold it to her for fifteen. That is the way it is charged on my books.

Mr. KNOWLTON. Is there any question, gentlemen, that that little book is identified as one of the books that were found? [No audible answer.]

GEORGE W. HALLIGAN — *sworn*.

Q. (by Mr. HAMMOND). Your name is George W. Halligan? A. Yes, sir.

Q. You were in business on the Shelburne side at Shelburne Falls in January last? A. Yes, sir.

Q. State whether or not you recollect cashing a check brought into your store by Mr. Amsden on Thursday, January 7. A. Shall I state it just as it occurred to me, just in my own way?

Q. Please do so.

Mr. KNOWLTON. Except the talk. You cannot put that in.

Q. State whether you identify the check that was brought to you. A. [Examining check handed him by Mr. Knowlton.] Yes, sir; that is the check.

Q. Look at the endorsement, and state whether or not you endorsed it afterwards to the bank? A. I did; yes, sir.

Q. What did you first see of that check? A. About quarter or half past 4, January 7, Mr. Amsden came into my store and said he wanted —

Q. Not what was said, but what was done; make a distinction. Tell what was done, without telling what was said. A. I cashed a check for him, — \$39.60.

Q. And whether that is the check that is before you? A. Yes, sir; it was.

Q. And whether, in doing that, there was any mistake? A. There was.

Q. State the mistake. A. Thirty-two dollars and sixty cents.

Q. What money did you give him? A. I gave him in large denominations to \$20 or \$25, and from that up to \$32 was in small denominations, and a fifty-cent piece and a ten.

Q. When, if at all, was the mistake corrected? A. In a few moments.

Q. What did you give him in correction of the mistake? A. Seven silver dollars.

Q. What were the bills that you handed him? A. Well, I couldn't say; there were from \$20 to \$25 in five-dollar bills, or possibly a ten, and from that they were in silver, or one or two dollar bills.

Mr. HAMMOND. That is all.

[No cross-examination.]

ALMINA P. BROWN — *sworn*.

Q. (by Mr. HAMMOND). Your name is Almina P. Brown? A. Almina P. Brown.

Q. Whether or not in January last you were in some business in the village of Shelburne Falls? A. Yes, sir.

Q. At what? A. Millinery store.

Q. And whether or not Mrs. McCloud called upon you Thursday, January 7? A. She did, sir.

Q. And did she transact any business with you, and, if so, what? A. She paid a bill.

Q. And what was the amount of the bill? A. Four dollars and eighteen cents.

Q. What did she give you in payment of that bill? A. She gave me a five-dollar bill.

Q. And what did you do in reference to the balance? A. I gave her the change, — eighty-two cents.

Q. Do you remember substantially the hat that she wore, and whether you can identify it? A. No, sir; I do not.

Q. And whether or not she had her pocket-book and travelling bag with her? A. She had a pocket-book and a travelling bag.

Q. And about what time was it on Thursday? A. Well, it was after 3 o'clock. I can't tell you the exact time.

Mr. BEER. I understand your Honors that our objection reaches right through this class of testimony.

SHELDON, J. I understood that your objection covers all the testimony as to her pecuniary transactions on Thursday.

Mr. HAMMOND. That is all.

SHELDON, J. Of course you will call any specific objection to the attention of the court. There has been a general objection saved to the introduction of this testimony of pecuniary transactions Thursday afternoon, and you do not object, as the court understands, to this testimony, except on that general ground.

Mr. BEER. That is all.

MASON, C. J. Anything that raises particular objection, other than the general objection, must be stated.

Mr. BEER. Yes, sir; we understand that.

ANDREW AMSTEIN — *sworn*.

Q. (by Mr. HAMMOND). In January last, were you a clerk in Jenks's shoe store? A. I was; yes, sir.

Q. And it is on the Shelburne side? A. Yes, sir.

Q. Whether or not you saw Mrs. McCloud at that store on Thursday, January 7? A. I did.

Q. At what hour in the day? A. I couldn't say at what hour, but it was in the afternoon; latter part of the afternoon, I should say.

Q. Whether she did any business there, and if so, what, in reference to money? A. She was owing \$1.50, and she paid that.

Q. How did she pay? In what denomination? A. I should say she gave me a two-dollar bill. I gave her back 50 cents.

Cross-examination.

Q. (by Mr. BEER). You are not sure about it, are you? A. Not exactly sure, but still I am positive, I think that is the way it was.

MRS. THOMAS ANDREWS — *sworn*.

Q. (by Mr. KNOWLTON). Are you hard of hearing? A. Yes, sir.

Q. What is your name? A. Mrs. Thomas Andrews.

Q. That is your husband's name. What is yours? A. Mary Andrews.

Q. Where do you live? A. On Clement Street.

Q. On the Buckland side? A. Yes, sir.

Q. Did you know Hattie McCloud in her lifetime? A. Yes, sir.

Q. You remember the day that she was found dead in the woods? A. Yes; sir.

Q. The day before that, did you see her? A. Yes, sir.

Q. Where were you when you saw her? A. I was opening my front door as she went by.

Q. Which way was she going, down the hill or up the hill? A. Down towards the village.

Q. Know what time of day it was? A. I couldn't tell; it was daylight.

Q. Did you notice what she had on? A. No, sir.

Q. Did she have on any kind of cloak? A. I couldn't tell; I didn't go out to see what she had on when she went by.

Q. See her have a shopping bag? A. No, sir.

Q. Didn't notice that? A. No, sir.

Q. You lived just above Sears Street. Would you know this plan if you saw it? It says Andrews there [indicating on map]. A. I live above the railroad.

Q. On Clement Street? A. Yes, sir.

Q. She was going down the hill? A. Going down towards the village.

Q. Was it anywhere near dark? A. Well, I hadn't my light lit.

Q. You wouldn't have your light at noon. Was it anywhere near dark? A. Oh, yes, sir; I was going to get supper.

Q. Anything about your blinds were you doing at that time? A. Yes, sir; was going to shut my blinds.

Q. You had not lighted your lamp? A. No, sir.

Q. You didn't see her again, did you? A. No, sir.

Cross-examination.

Q. (by Mr. DOWLIN). What time was it when you started for the train? A. What train, sir?

Q. The next morning.

Mr. KNOWLTON. I didn't say anything about a train in my examination.

Q. (by Mr. DOWLIN). I thought I caught something of that kind. A. I started in the train for Northampton.

Q. When you saw Mrs. McCloud was she going down hill or up the hill? A. She was going down, sir, towards the village.

Q. What means had you of knowing what time it was? A. Well, I had no light. I was opening my front door, and saw her going by. I was going out to shut my blinds.

Q. You don't know whether it was 4 o'clock or 5 o'clock, do you? A. No, sir; I didn't look at no clock.

Q. So you are not positive what time it was, only it was in the afternoon? A. No, sir, I cannot swear; only it was daylight.

Q. It was daylight, and in the afternoon. You had had your dinner. Was it in the afternoon? A. Yes, sir.

Q. And that is as definite as you can be about it? A. Yes, sir.

Mr. KNOWLTON. Did I point out to the jury where Mrs. Andrews lived? I didn't try to fix it by her. This is the house marked "Andrews," on Clement Street.

MINNIE SMITH — sworn.

Q. (by Mr. HAMMOND). Your name is Minnie Smith? A. Yes, sir.

Q. Whether or not you saw Mrs. McCloud on Friday, January 8? A. I did.

Q. And where? A. In Schmidt's bakery.

Q. Were you employed there? A. Yes, sir.

Q. And about what time in the day did you see her there? A. It was between 5 and 6 o'clock.

Q. Did she have any errand or business there? A. Yes, sir.

Q. On which side of the river is it? A. On the Shelburne side.

Q. And whereabouts on the street is it, on the map?

Mr. KNOWLTON. There, at the corner of Water Street?

THE WITNESS. Yes, sir.

Mr. KNOWLTON. That is it, right there.

Q. Did she have any money transaction at your store? A. Yes, sir.

Q. What was it? A. Bought a dozen cookies.

Q. State all that she did about money. A. She bought a dozen cookies, and she owed ten cents; she paid that.

Q. How much did she pay in all? A. She gave me a twenty-five cent piece and I gave her five cents back.

Q. Won't you speak louder, so they can all hear? A. A dozen sugar cookies, and she owed ten cents.

Q. She paid twenty cents at that store? A. Yes, sir.

Q. And handed you a twenty-five cent piece? A. Yes, sir.

Q. Did you observe whether she carried a hand bag or not? A. I thought she did.

Q. In what way did you do up the cookies? A. In a paper bag.

Q. Did she take it away with her? A. Yes, sir.

Q. And about what was the size of those cookies? A. About that large, I should think.

Cross-examination.

Q. (by Mr. BEER). Was that all the money you saw her have? A. Yes, sir.

ALBERT J. AMSTEIN — *sworn*.

Mr. KNOWLTON. To save time, I will point out Mr. Amstein's store. It is right there. The jury saw it, but they might have forgotten it.

Q. (by Mr. HAMMOND). What is your full name? A. Albert J. Amstein.

Q. You are in business on the Buckland side with your brother? A. Yes, sir.

Q. What is your firm name? A. Amstein Bros.

Q. And is your store directly opposite the bridge? A. Yes, sir; in the Newell block.

Q. Whether or not you saw Mrs. McCloud there on Thursday, January 7? A. I did.

Q. At what hour? A. Between half-past 4 and 5.

Q. What, if any, business did she have? A. She purchased one pound of ginger nuts, — that is, one quart of ginger nuts, ten cents.

Q. Whether or not she paid? A. She did.

Q. Whether or not you observed from what she produced the money? A. Yes, sir; that is, the wallet.

Q. Well, state what you observed. A. She opened the wallet and

took out a roll of bills, held it in one hand, and took out a ten-cent silver piece and paid me.

Q. About how long did she stay? A. Why, we talked a few minutes, and she went right out.

Q. Whether you saw her on the following day? A. I did.

Q. What was her errand? A. Well, the following day I was working at my books in the rear of the store, she came in between quarter of 6 and 6.

Q. That is Friday, the last day of her life? A. Yes, sir; my brother William, who you will see later, waited on her that afternoon.

Q. Is his name Frederick William? A. Yes, sir.

Q. You call him William? A. Yes, sir.

Q. Well, go on. Did you have any money transaction with her on Friday? A. I did not.

Q. You saw her in the store? A. I did.

Q. At about what time? A. Between quarter of 6 and 6 o'clock.

Q. How can you fix the time you last saw her? A. Well, I was working on the books, and there was doings at the Odd Fellows that evening, and I had considerable book-work to do, and I wished to get through with it, and I would look at the clock occasionally. That is how I fix the time.

Q. And what do you fix as her leaving time? A. About five minutes of 6.

[No cross-examination.]

FREDERICK W. AMSTEIN — *sworn*.

Q. (by Mr. HAMMOND). You are one of the firm of Amstein Bros., grocers, on the Buckland side? A. I am, sir.

Q. Whether or not you saw Mrs. McCloud on Friday, January the 8th? A. I did.

Q. And at what time and where? A. At Amstein Bros.' store, about ten minutes before 6, thereabouts.

Q. State whether or not she did any business. A. She did.

Q. That is Friday, the last day of her life? A. That is Friday.

Q. Well, — A. Well, Friday she came in the store about ten minutes before 6. She had bought some cookies the day before, and she said that her daughter —

Q. Not what she said, but just what she did. A. Well, she took and had those cookies exchanged for another kind, for Graham wafers, and bought two oranges also.

Q. In what were the Graham wafers done up? A. Done up in a small bag.

Q. A paper bag? A. A paper bag; yes, sir.

Q. And in what were the two oranges done up? A. Also in a paper bag.

Q. Was there any money passed? A. Well, she passed six cents over to me for the two oranges.

Q. Did you see what she had in the way of anything to carry bundles in? A. She had a bag, black satchel.

Q. Whether it was apparently that bag? A. Well, you just let me see the bag, please. I should say that would be the bag, a bag of that stamp anyway, with the scroll work on it.

Q. Did you observe what she did with reference to the bundles? A. I think she put one bundle in this bag, here, and the other bag she carried in her hand.

Q. And what was it she carried in her hand? A. I shouldn't say whether it was the oranges or the Graham wafers, either one of those two; it was either the Graham wafers or the oranges she carried in one hand, and the other parcel she put in the bag.

Q. Did you observe as to any other package she had? A. Well, a package laid on the counter at my left, done up; there was a package there about fourteen inches long, or something like that, and it looked like a book to me. It was done up in paper.

Q. Will you compare the size with the size shown you [indicating book]. A. I should say that was the size.

Q. About what time did she leave? A. About 6 o'clock.

Cross-examination.

Q. (by Mr. BEER). What time did you say she came into the store? A. She came into the store about ten minutes of 6, somewhere about that.

Q. Have you stated before that it was about ten or fifteen minutes to 6? A. Well, I said somewhere about ten minutes of 6, before that, before 6 o'clock.

Q. Well, have you stated that she came on Friday evening about ten or fifteen minutes to 6? A. Have I stated that? I stated that at one time, ten or fifteen minutes before 6; that I did state.

Q. Did you look at the clock when she left? A. I did not look at the clock, but I could tell —

Q. That answers the question. Did you see any money that she had on Friday when she paid you for the oranges, except what she paid you? A. I saw the six cents that she paid me, and that is all the money that I see.

Q. Where did she take it from? A. The money?

Q. Yes. A. Well, I suppose she took the money from her wallet.

Q. Not what you supposed, but what you saw. A. I should say she took the money out of her wallet.

Q. Is that [showing] the wallet? A. I couldn't identify the wallet.

Q. Did it look like that? A. It was something like that; it was a dark wallet, but I couldn't say any more.

Q. Did she place the oranges in the bag? A. No, sir; I placed the oranges in the bag.

Re-direct Examination.

Q. (by Mr. HAMMOND). In what bag did you place the oranges? A. I placed them in a paper bag, such as we put up all kinds of goods in. Of course it was a small bag, for two oranges.

Q. Did you have anything to do with this travelling bag? A. No, sir.

Re-cross-examination.

Q. (by Mr. BEER). Did you see what she did with the oranges? A. She either took the oranges in one hand, or put one bag into this bag here, or a bag of this kind.

Q. Did you see any book in the bag? A. I didn't see any book in the bag. She took the book under her arm when she went out of the door. I don't say it was a book; it was a square package, about fourteen inches long.

Q. How many packages did she have? A. This and another, a small one which was either the oranges or the Graham wafers, that she carried in one hand.

Q. And the other packages in the other? A. Yes, sir.

EARL M. DUNCAN — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Earl M. Duncan.

Q. How old are you? A. Thirteen, — going on thirteen the 24th of February.

Q. You mean you are twelve now? A. Yes, sir.

Q. Whether or not you knew Mrs. Hattie E. McCloud in her lifetime. A. I did.

Q. And did you see her on Friday, the last day of her life? A. Yes, sir.

Q. And where did you see her? A. Ward's corner.

Q. At Ward's corner, that was on the Buckland side? A. Yes, sir.

Q. State what you saw of her, and what you saw her doing, if anything. A. She was walking, and she had on a cape, and had furs, a double one, and fur around it.

Q. Whether you saw her have anything with her? A. Yes, sir; she had some bundles.

Q. And whereabouts with reference to the store? Can you turn right around and show on the map? Can you find Ward's corner?
A. [Shows.]

Q. Whereabouts with reference to that corner did you see Mrs. McCloud? A. Right in there [showing].

Q. Right on the corner? A. Right there [showing], not quite on the corner.

Q. On which side was she? A. Me?

Q. On which side did you see her? A. She was on Ashfield Street.

Q. That is called the State road, is it, too? A. Yes, sir.

Q. Where did you stand? A. I stood right across by this wall, over in here [showing].

Q. On the side of Ashfield Street towards the river? A. Yes.

Q. Did you observe where she went? A. No, sir.

Q. Which way was she going? A. She was walking right straight ahead.

Q. Which way, south or north? A. This way, south.

Q. Going towards the depot, or towards Clement Street? A. Going towards the depot.

Q. And would the first corner ahead of her be Clement Street corner? A. Yes, sir.

Q. Could you tell about what time it was? A. It was a little after 6; I couldn't tell just what time it was after 6; I know it was after 6, though, clear.

Q. Did you see whether she went up Clement Street or not? A. No, sir.

Q. Did you see her to know whether she crossed it or not? A. No.

Q. How could you fix the time of day? A. I know it was after 6, and must have been pretty near five minutes past 6.

Q. What had you been doing by which you could fix the time, if anything? A. I had been carrying my father's supper, and by Joyce's house I heard a short whistle blow 6 before I saw her.

[No cross-examination.]

FRANK F. TATREAU — *sworn*.

Q. (by Mr. HAMMOND). Your name is Frank Tatreau? A. Frank F. Tatreau.

Q. What is your business? A. Carpenter and cabinet maker.

Q. Where do you live? Where did you live in January last? A. Shelburne Falls, on the Buckland side.

Q. Whether or not you saw Mrs. Hattie McCloud on Friday, the last day of her life? A. I did.

Q. At what point? A. At Ward's corner.

Q. State what you saw of her. A. I first saw her at the north end of the building. I walked behind her to the south end of the building. She turned up the street.

Q. And turned up what street? A. Turned up Clement Street to the hill.

Q. Turned up Clement Street round Ward's corner? A. Yes, sir.

Q. Did you notice her dress? A. I noticed just her cloak and hat.

Q. About what time of day? A. Well, somewhere between quarter of 7 and eight or ten minutes of 7.

Q. And whether you were before her or behind her? A. I was behind her.

Cross-examination.

Q. (by Mr. BEER). What is your business? A. Carpenter and cabinet maker.

Q. Where did you live at that time? A. Shelburne Falls, Buckland side.

Q. In whose house? A. Mrs. M. Schontag's.

Q. Whereabouts is that? A. At the head of Clement Street.

Q. Have you seen that map? Are you familiar with that map behind you? A. Yes, sir.

Q. Point out where the Schontag house is. A. [Witness indicates.]

Q. What time was it when you left the house? A. Twenty-seven minutes of 7.

Q. How does the house face? A. Faces Clement Street, down the hill.

Q. How do you know what time it was that you left? A. One of the young men of the house was in my room, and he asked me what time it was.

Q. Who was he? A. Ed. Schontag.

Q. What time was it then? A. Twenty-seven minutes of 7. I was putting on my hat to go out of the house.

Q. What time was that? A. Twenty-seven minutes of 7.

Q. How long after that was it that you left? A. I left immediately.

Q. Had you to change any clothing after you told Schontag? A. No, sir.

Q. Where did you go from there? A. I went down the hill and over to J. A. Richmond's shop.

Q. Where is that? A. I don't know the name of the street; on the Buckland side, up the river.

Q. Can you point it out? A. It is up this street here [indicating],

right up through here, on the State road, about in here, I should say, somewhere.

Q. That is where you live? A. Yes, sir.

Q. Which way did you go down? A. Here [indicating].

Q. This shop was down about here [indicating]. A. About there, some place.

Q. Did you come down the steps there? A. Yes, sir; I did.

Q. How fast did you go? A. Well, I ran down the hill, — ran all the way down the hill.

Q. You went to the shop, you say? A. Yes, sir.

Q. What did you do there? A. Went and got pipe and tobacco left on my work bench.

Q. The shop on the Buckland side? A. Yes, sir; right-hand side of the road as you go up.

Q. You had to unlock the door? A. Yes, sir.

Q. And get what you wanted there? A. Yes, sir.

Q. And lock the door? A. Yes, sir.

Q. And then you walked down the street, did you? A. Yes, sir.

Q. You had run to the shop? A. I run way towards Ward's corner, way down the hill.

Q. Where was the first place you saw a person after leaving the shop? A. Right opposite from the blacksmith's shop, — Gleason's blacksmith's shop.

Q. That is near your other shop? A. Yes, sir.

Q. Where was it you saw the person you call Mrs. McCloud? A. At the north end of the Odd Fellows' building.

Q. Did you see her coming from any place? A. No, sir.

Q. How far were you from her when she appeared before you? A. Within ten feet.

Q. Was it light? A. The moon was just coming up.

Q. Were the electric lights burning? A. No, sir.

Q. How fast were you going before you saw her? A. Why, quite a rapid gait.

Q. Did you slacken your pace? A. I did.

Q. Did you pass her? A. Yes, sir.

Q. Did you look into any store as you came by there? A. I looked into Ward's store.

Q. You were looking in there, and did you see any light there? A. Yes, sir.

Q. And from former testimony I understand that you were looking into that store to see what was in there while you were passing the store? A. Yes, sir.

Q. And you did not pass this woman until you came to the corner? A. No, sir.

Q. And then you again passed her, or you passed her then? A. She turned up the street, and I went straight.

Q. You kept behind her all the time? A. Yes, sir.

Q. Did she look around to you? A. Yes, sir.

Q. Did you speak to her? A. No, sir; I didn't have any speaking acquaintance with her.

Q. And you proceeded on your way? A. Yes, sir.

Q. How long had you lived in Buckland before that time? A. About a year and a half.

Q. Had you ever spoken to her? A. No, sir.

Q. Were you acquainted with her? A. Yes, sir; acquainted with her by sight, — seen her by sight.

Q. How many times had you seen her before that? A. I couldn't tell you; seen her for a year, going by every day, about.

Q. Anybody with her? A. No, sir.

Q. Anybody between you and her? A. No, sir.

Q. Until she passed the corner, did you see anybody there? A. No, sir.

Q. And you went on to where? A. Went up the hill to the railroad station.

Q. What did you see her have? A. Saw some bundles under the cape; couldn't see what they were; saw she had bundles.

Q. Bundles under her cape? A. Yes, sir.

Q. How do you know? A. Why, her arm stuck out.

Q. Way she drew her arm over? A. Yes, sir.

Q. You couldn't tell what those bundles were? A. No, sir; couldn't see them.

Q. Did you see the bundles? A. I did not.

Q. How do you know then, that they were bundles? A. I supposed they were.

Q. The bundles, that you supposed they were, were under her cape? A. Yes, sir; under her left arm.

Q. The only way that you identified that it was Mrs. McCloud was the cloak, and the hat, and the back part of her person? A. Yes, sir.

Mr. KNOWLTON. He has not said that.

Q. (by Mr. BEER). You say yes to that? A. Yes, sir; her figure.

EDWARD SCHONTAG — *sworn*.

Q. (by Mr. HAMMOND). Your name is Edward Schontag? A. Yes, sir.

Q. How old are you? A. About nineteen the 6th of next month, — eighteen.

Q. Whether or not you saw Mrs. McCloud on Friday, January 8?

A. That is whom I took it to be; I took it to be Mrs. McCloud.

Q. And about what place? A. What they call Hill Street; about the middle of it, I should say.

Q. Won't you turn round and show it on the map? Can you see what is marked as Clement Street? A. This through here [indicating]. That is Green Street and that is Ward's corner. This is Clement Street. Right here is the corner. I should say it was about in the middle.

Q. About at the corner of Hill Street and Clement Street? A. A little this side of the corner.

Q. On which street was she? A. On Hill Street.

Q. You put your finger on Clement Street. Will you now show where you think she was? A. This Hill Street here?

Mr. KNOWLTON. That is what the surveyor said.

THE WITNESS. I should say she was about in the middle.

Q. About in the middle of Hill Street? A. About there.

Q. Where do you live? A. I live right up on the top of the hill, Clement Street.

Q. Point it out. A. [Witness indicates.]

Q. Which way was the woman going? A. Up the hill.

Q. Which way were you going? A. Up the hill.

Q. How were you going up the hill? A. Up in a road cart.

Q. Driving? A. Driving.

Q. Driving a horse hitched into a road cart? A. Yes, sir.

Q. Whether there was any one with you? A. Yes, sir.

Q. Who? A. Hiram Bardwell.

Q. State fully what you saw as you were there on Hill Street. A. I didn't notice anything only this lady I passed that I took to be Mrs. McCloud.

Q. Describe everything you saw that indicated to you whom she was. A. Nothing particular, only I noticed her there, and that is who I thought it was as I passed her; I didn't notice her very closely.

Q. Could you tell how she was dressed? A. This woman had on a long cape.

Q. Notice about her hat? A. Looked to me as if it was one of these big walking hats.

Q. Notice any bundles? A. No, sir; I didn't notice any bundles.

Q. How long had you known who Mrs. McCloud was? A. For several years.

Q. Do you live in the Schontag house above School Street? A. Yes.

Q. And where were you intending to drive, or where was your course of driving? A. I was going home after my carriage.

Q. And where did you drive? A. From there we drove down street.

Q. Well, where did you drive from Hill Street at the time you saw Mrs. McCloud? A. Up on to — I think they call it Green Street.

Q. First on Green Street. Turn around and point to Green Street, please; point on the map the line that you drove. A. I came right up here.

Q. That is, up Clement Street? A. Up Clement Street.

Q. That is, through Hill Street? A. Down Hill Street and up Green Street.

Q. Up the hill to the house in which you live? A. Yes, sir.

Q. Which side of the road did you see this woman? A. On the left-hand side.

Q. And which side was that, east or west? A. On the east side.

Q. For how long a time was she in your sight? A. Well, I don't know how long it was; just while the horse was walking by her. The horse was walking faster than she was.

Q. Did you speak? A. No, sir.

Q. Did you see her features at all? A. No; I didn't notice them.

Q. And this was about what time in the evening? A. Why, I should say somewhere around 7, a few minutes after, perhaps.

Q. Somewhere around 7? A. Yes, sir.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Now, you say that [indicating on map] is where your home is? A. Yes, sir.

Q. And your home is located how far back from Hill Street? A. Not more than twenty yards, maybe.

Q. Not more than twenty yards? A. I should say so.

Q. Now, on Friday night, after supper, what did you do first? A. I washed me first.

Q. Where were you going? A. I was going to Buckland to a dance.

Q. Had you any appointment to meet any one that night? A. I did have.

Q. Where was the first place that you went to after you left your home? A. At the Chinaman's.

Q. Will you please indicate on this map here, — where is the Chinaman's laundry? A. It is right up River Street, on the Shelburne side.

Q. On Main Street, is it? A. River Street, Water Street, up in here.

Q. Is it on Water Street? A. Yes; on the right-hand side as you go up the street.

Q. Right in here somewhere? A. I should say it was about in there.

Q. Then, that was the first place that you went to from your home, — which way did you go? A. Come right down Clement Street.

Q. Along the State road? A. Yes, sir.

Q. And across the bridge there? A. Yes, sir.

Q. And up Water Street? A. Yes, sir.

Q. That is the direction you went. Now, was there anything occurred in the Chinese laundry that called your attention to the time of day it was? A. Well, I see the clock sitting there on the shelf, right in front of his stand there.

Q. What time was it there? A. Well, that clock was two or three minutes of 7.

Q. Two or three minutes to 7? A. Yes, sir.

Q. After you left the Chinese laundry, where did you then go? A. Came out onto Main Street onto Bridge Street and —

Q. Turn around and point on the map, so that the jury can see just where you went. A. I came out of the Chinaman's here, came up Bridge Street and up Main.

Q. Whereabouts on Main Street did you stop? A. I didn't go up Main but a very little ways.

Q. Well, where did you stop? A. I went up about as far as there, — I went up about —

Q. Why did you stop? A. To get in the road cart.

Q. Whose road cart? A. Bardwell's.

Q. Was that the gentleman that you had an appointment with? A. Yes.

Q. Now, you need not answer this. Was there any conversation that occurred between you and Bardwell that would help fix the time in your mind? A. Help fix the time?

Mr. KNOWLTON. We will take your Honors' judgment on that question.

A. No, sir; not that I know of.

Mr. DOWLIN. Wait a moment.

SHELDON, J. Is the question objected to?

Mr. KNOWLTON. We will take your Honors' ruling on it.

SHELDON, J. I do not see how the conversation is competent.

Mr. DOWLIN. I simply ask for it to be ruled on.

SHELDON, J. If you want the fact whether there was any conversation to fix the time, you may ask.

Q. Was there any specific time appointed that you were to meet Bardwell? A. Yes, sir.

Q. Were you early, or were you late? [Objected to; excluded.]

Mr. DOWLIN. This is in cross-examination.

SHELDON, J. Yes; but it doesn't make immaterial testimony competent.

Q. After you met Bardwell, what did you then do? A. Got in and we drove across the bridge.

Q. You drove across the bridge. You came down Main Street? A. Yes, sir.

Q. Down Bridge Street? A. Yes, sir.

Q. Across the Shelburne bridge? A. Yes, sir.

Q. Along the State road? A. Yes, sir.

Q. Around Ward's corner and up Clement Street? A. Yes, sir.

Q. Now, that was after you had left the Chinese laundry and gone around and got in with Bardwell, I understand? A. Yes, sir.

Q. And then made that trip? A. Yes, sir.

Q. That you saw a lady you thought was Mrs. McCloud? A. Yes, sir.

Q. Now, will you tell just where you saw that lady that you thought was Mrs. McCloud? Point it out on the map. A. I should say about in here [indicating].

Q. Do you mean half way between the Crittenden road above that ledge of rocks, and upon Clement and Hill streets? A. No, sir.

Q. Well, how near the corner of Clement and Hill streets did you meet the lady you thought was Mrs. McCloud? A. Why, just a little, — why, she wouldn't have had to walk but a couple of minutes before she would turn into Green Street just in front of Dewsnap's gate.

Q. Were the electric lights burning that night? A. I couldn't say whether they were burning or not.

Q. Did you see her face? A. Yes, sir; took a glance at her.

Q. Are you sure of that? A. I took a glance at her; I thought I see her, I think I did.

Q. Haven't you stated that you didn't see her face? A. I don't think I have. I couldn't help but look at the woman and see her face; may be I couldn't recognize her; but I don't think I have stated that I didn't see her face.

Q. Haven't you stated that you couldn't positively say whether it was Mrs. McCloud or not? A. Yes, sir; I have.

Q. And you didn't see her face? A. I don't know as I stated I didn't see her face; I took a glance at her.

Q. Haven't you stated to me that you didn't see her face? A. I don't know as I have.

Q. In a conversation I had with you? A. I don't know as I have.

Q. Will you swear you have not? A. I wouldn't swear; but I don't think I have.

Q. Did you take any particular notice how she was dressed? A. No, sir; I did not.

Q. Didn't notice what garments she had on? A. Why, this woman I thought had on a cape, — quite sure she had on a cape.

Q. You didn't take any particular notice? A. No, sir; I didn't.

Q. Did you take any particular notice of any packages or bundles that the party that you saw was carrying? A. No, sir; I didn't.

Q. Was you in conversation with Mr. Bardwell at the time you turned the corner there? A. I don't know whether I was or not; might have been and might not.

Q. You wasn't taking any particular notice of anything? A. No, sir.

Q. So, then, you haven't anything more than simply an impression that it was Mrs. McCloud you saw at that point. A. That is all.

Q. Now, it was two minutes of 7 when you were at the Chinese laundry.

Mr. KNOWLTON. By that clock, he said.

A. By that clock, two or three; between five and twelve, anyway, — the pointer.

Q. Now, have you any means of knowing about what time it was when you left your own home to go to the Chinese laundry? A. No, sir; I have not.

Q. You were on the witness stand at the preliminary hearing, weren't you, at the hearing held before Judge Lyman in the district court in Greenfield? A. Yes, sir.

Q. And on the witness stand didn't you state that it was about five minutes of 7 that you left your house? A. Well, it might have been. I should say it was about five minutes if I got down there —

Q. Did you say it, or didn't you? A. I don't remember whether I did or not.

Q. If you said it, was it true?

Mr. KNOWLTON. I pray your Honors' judgment.

THE WITNESS. I should think it was about that.

SHELDON, J. You needn't answer the question.

Mr. DOWLIN. I will withdraw it.

Q. Did you make any inquiry of anybody in your house what time it was that night? A. I did before I changed my clothes.

Q. Now, who was it that you made that inquiry of? A. A gentleman that boards at our house, Frank Tatreau.

Q. What time did he tell you it was?

Mr. KNOWLTON. Wait a minute.

SHELDON, J. That has already been testified to by Tatreau.

Mr. KNOWLTON. Very well, I don't make any objection.

Mr. BEER. Is that ruled out?

SHELDON, J. He may put the question; it is not objected to.

Mr. KNOWLTON. Did I understand your Honor to say it had been testified to by somebody?

SHELDON, J. Tatreau testified to it, I think, on direct examination.

Mr. KNOWLTON. That is what I thought your Honor said.

Q. What time did Tatreau tell you it was? A. Twenty-seven minutes of 7.

Q. Twenty-seven minutes of 7? A. Yes, sir; I think that is what it was.

Q. Now, after Tatreau told you what time it was, what did you do? A. I left his room and went up stairs to mine and changed my clothes.

Q. And changed your clothes? A. Yes, sir.

Q. Got ready for a dance? A. Yes, sir.

Q. Then what did you do? A. After I got my clothes changed?

Q. Yes. A. Why, I went down street to the Chinaman's after I got all ready.

Q. So twenty-seven minutes of 7 by Tatreau's watch you then left his room, went up stairs to your room, changed your clothes, and got down to the Chinaman's laundry and found by the Chinaman's clock that it was two minutes of 7? A. Yes, sir; about that time.

Q. Now, how long would it take you to go from the Chinaman's laundry around onto Main Street, where you met Bardwell? A. I don't think it took over three minutes.

Q. Not over three minutes? A. No, sir.

Q. Did you meet Bardwell on the street? A. Met him on Main Street.

Q. Did you go to any place to see him and not find him before you met him? A. No, sir.

Q. Now, how long would it take you to drive from Main Street, down Bridge Street, across the bridge, up around Ward's corner and Clement Street, up to the point where you thought you saw Mrs. McCloud? A. I don't know how long it would take.

Q. How long did it take you? A. I don't know.

Q. Ten minutes? A. I don't think it did.

Q. It is up hill, isn't it? A. Why, it is up hill from — it isn't all up hill; there is a little up hill.

Q. Up grade from Ward's corner? A. Why, there is up grade a little ways up, to Phil Woodward's; and then you can trot a horse for quite a little ways there, after you get up there.

Q. Wouldn't it take ten minutes, the way you drove that night? A. To go from where I met Bardwell to where I thought I see her?

Q. Yes. A. I don't think it would.

Q. Take eight minutes? A. I don't think it would take more than five.

Q. More than five? A. I don't think it would, because he trotted all the way across the bridge, — trotted every time he got a chance to on a level.

Q. Where did you go after you met that lady that you thought was Mrs. McCloud? A. I went up Green Street and over to our barn, over on Union Street.

Q. What did you do after that? A. Went down to the house and got the keys and lantern and pulled out the carriage.

Q. Did you make any exchange of vehicle? A. Yes, sir; changed from the road cart to the carriage.

Q. Where did you go after you got hitched into the carriage? A. Down street.

Q. Back the same way you came? A. Why, very near; I didn't go back on to Main Street.

Q. But you went back by Ward's corner? A. Yes, sir.

Q. Whom did you meet on your trip back? A. I don't know as I met anybody; I didn't notice anybody.

LOUIS MEYERS — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Louis Meyers.

Q. Where do you live? A. In Buckland, — Shelburne Falls, Buckland.

Q. What is your business? A. I am a grinder.

Q. Did you know Mrs. Hattie E. McCloud by sight? A. Yes, sir.

Q. Whether or not you saw her on Friday? A. Yes.

Q. The last day of her life? A. Yes, sir.

Q. State where you were and where you were going. A. I went down street. I met her right in the corner by that lamp-post. I met a woman there; I don't know whether it was Mrs. McCloud or not; I couldn't swear to it; it was a woman.

Q. On what street was it? A. Clement Street.

Q. Where is your own house? A. On Green Street, on Union Street.

Q. Can you point it out on the map? A. [Showing.] Yes, there is my house here.

Q. And about what time did you leave your house? A. A little after 7.

Q. And state which way you went. A. I went down to Clement Street.

Q. Won't you point out the way you went? A. I went down that way [showing].

Q. Where did you go then? A. Over the river.

Q. What? A. Over the bridge.

Q. Did you go into Clement Street? A. Yes, sir.

Q. How did you get into Clement Street? A. There is where my house is [showing]. I can't tell by that map here.

Q. Did you go down over the ledge? A. No; I went down, I walked over.

Q. And whether or not you went through that street that is just under the — right in front of Mrs. Schontag's house? A. No; I went by that, passed that electric light post before you get to Mrs. Schontag's house.

Q. And along by Dewsnap's, and O'Brien's and Ball's, that street? A. Yes, sir.

Q. Whether or not you were alone. A. I was alone.

Q. Which side of the road were you on? A. The right, — the right side of the road.

Q. Going down the east side of the road? A. Yes, sir.

Q. And did you go on the south side of Clement Street? A. Yes.

Q. Now, whereabouts did you meet a woman that you thought was Mrs. McCloud? Was it after you turned the corner in Clement Street? A. Yes.

Q. Near to whose house? A. Below Dewsnap's house.

Q. Describe her appearance? How did you come to notice her? A. Well, I saw her coming front of me, and I came down, and she came up, and she walked on the other side; and I can't swear whether it was Mrs. McCloud or not. It was a woman, and I was just lighting my pipe when she passed me.

Q. Who do you think it was that you met? A. I couldn't tell you; it was a woman.

Q. Did you think you knew who it was? A. No, I can't say for sure. I didn't look back which way she came, whether she went up the street there.

Q. When you met her, did you think you knew who it was? [Objected to. Admitted.] A. I thought the other day in my mind that must be the woman.

Q. By the woman, whom do you mean? A. Mrs. McCloud.

Q. Now, whether or not you went to the place where the body was found on the next morning? A. Yes.

Q. How many were at the place, if anybody, when you got there? A. There was three or four of them there.

Q. Who? A. Mr. Crittenden, Mr. Mallory and his son, and Edward Morrissey.

Q. How long did you remain? A. I was there until they fetched her up to the house.

Q. Did you help carry the body to the house on the blanket? A. Yes.

Q. While you were there, was there any change made in the position of the body till Dr. Canedy got there? A. Yes, sir; I was there.

Q. And was it left just as you found it till Dr. Canedy got there? A. Yes, sir.

Q. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). What time of day was it that you left your home? A. A little after 7. The New Haven train came in.

Q. The New Haven train had just come in? A. Yes, sir.

Q. What time was that due there? A. Seven minutes past 7.

Q. Was the electric light burning on the corner of Hill Street and Crittenden road that night? A. No, sir.

Q. Dark, wasn't it? A. But the moon was out.

Q. Yes, but it was quite dark, wasn't it? A. It was a little dark, — not so very.

Q. Have you stated to any one that it was very dark? A. No.

Q. Did you meet the lady on the same side of the road that you were on? A. No.

Q. You had crossed the road? A. Yes, sir.

Q. How wide is the road at the point where you met the lady? A. Oh, about eight or ten feet.

Q. So she was eight or ten feet away from you when you saw her? A. Yes, sir.

Q. When you passed her? A. Yes.

Q. And just as you were passing her you were lighting your pipe? A. Yes.

Q. Haven't you stated that the flash of the match in your eyes made it impossible for you to discern whether it was a woman or not? A. No; I saw it was a woman; it was a woman.

Q. And haven't you stated that it was impossible for you to distinguish anything that she had on, and that you couldn't tell who it was? A. No, not that I can remember.

Q. Are you sure who it was? A. No, I ain't sure who it was, but I say the other day it happened I have it in my mind, it was that woman.

Q. How was it in your mind? How was it first called to your attention? A. I thought that day it was the woman I saw going up last night.

Q. You didn't see her face? A. No.

Q. You didn't recognize any of the garments that she wore, so that you could tell if you saw them again? A. No, not so near.

Q. You only know that it was a woman? A. Yes.

Q. And from what you have heard since, putting that together with your knowledge now, do you make up your mind that it might have been Mrs. McCloud? Is that the way that you get at it? A. Yes.

Q. Yes, I thought so.

ELLEN DEWSNAP—*sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Ellen Dewsnap.

Q. How old are you? A. I am seventy.

Q. Where do you live? A. I live on Green Street, at the crossing of Union Street.

Q. On the corner of Union and Green streets. And that is just above what is called Hill Street? A. Yes, sir; in front.

Q. Did you know Mrs. Hattie McCloud in her lifetime? A. Oh, yes, sir; I do.

Q. How long had you known her? A. More than twenty-five years.

Q. Twenty-five years? A. Yes, sir.

Q. How long had you lived at the place you now live? A. I guess pretty near forty years.

Q. Whether or not you had been accustomed to see her go by? A. Oh, yes, sir; quite often.

Q. Had you a speaking acquaintance with her, too? A. Yes, sir.

Q. And do you know what her accustomed road was as she went to town, whether it was by your house? A. Yes, sir.

Q. When did you last see Mrs. McCloud alive? A. On Friday night, the 8th of January.

Q. Did you say it was on Friday night? A. Yes, sir.

Q. And where were you at that time? A. I was closing my shutter, dining-room shutter.

Q. And on which side of the house are the dining-room shutters? A. On the south side, looking to Green Street.

Q. On the side toward Green Street, you say? A. Yes, sir.

Q. And which door did you go out of to go there? A. Out of the front door, the east door.

Q. And the front door is on what side? A. On the east side, sir.

Q. And that is, the front door is toward Hill Street? A. Yes, sir.

Q. And now, when you were on the south side of your house toward Green Street, tell the jury what you saw. A. I saw Mrs. McCloud going up the opposite side, up across the street and going up the hill.

Q. On what street was she walking or going? A. On Green Street, sir, going up the hill.

Q. Whether or not she was on foot? A. Yes, sir.

Q. And can you tell on which side of Green Street she was walking? A. She was walking on the opposite side to where I live.

Q. And that would be on the south side of Green Street? A. Yes, sir.

Q. Can you describe her dress or appearance in any way? A. I can't tell her dress, more than it was all dark. I know she had a cape, black cape, on; that was all I could tell.

Q. How sure are you that it was Mrs. McCloud? A. I could tell her any time by her form and her walk, her being so used to go up by, went up so often.

Q. Have you any doubt about it that that person was Mrs. McCloud? A. No, sir; not any.

Q. And now, about what time was it? A. When I went in the house again I looked at the clock, and it was ten minutes to 7.

Q. Do you know whether or not your clock was right? A. I don't know, sir, more than my husband said.

Q. Did you notice whether or not she carried bundles? A. Well, she had her hands in front of her, as if she was. I couldn't say, because she was going up, walking up, and I was back, of course.

Q. About how long time were you out of your house at that time? A. Well, I don't know, sir, exactly; I couldn't tell how long.

Q. During the time that you were out there, whether you went to the outhouse? A. Yes, sir.

Q. And whether you had occasion to look at a vine that you thought of taking down? A. Yes, sir.

Q. And whether you —

Mr. BEER. We object to this leading of the witness, your Honor.

Mr. HAMMOND. Yes, I suppose so, if it is objected to.

Mr. BEER. You may ask what she did.

Q. Are you able to state about how long a time you were out doors? A. I think about ten minutes.

Q. Whether or not any cart or vehicle of any kind drove into the street above your house? A. Yes, sir.

Q. And do you know who it was? A. No, sir; I didn't know the man.

Q. Is that the road that leads to the Schontag house and barn? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). What is your age? A. Seventy years.

Q. Were the electric lights burning that night? A. Yes, sir.

Q. They were? A. Yes, sir.

Q. Will you please turn around and look at the map? As indicated on the map, that is your home there [indicating]. Was it on this

side of the street here that you saw the lady you thought was Mrs. McCloud? A. I don't understand the map very much.

Q. Was it on the south side of the street that you saw Mrs. McCloud? A. Well, the street is on the south, and it was on the opposite side of the road.

Q. On the opposite side of the road from your house? A. Yes, sir.

Q. How far away were you from the person that you thought was Mrs. McCloud when you first saw her? A. I was just fastening my window shutters, sir, of the house; I don't know the distance, how far.

Q. About how far? A. I don't know.

Q. How far are the shutters of the house where you were at that time from the fence that divides your land from the road? A. Well, I cannot tell the exact measure, sir, but it is not very far.

Q. About how far? A. I can't tell you, sir; I should think about as far as that [indicating from the window to the stand].

Q. Sure it was not farther from where you stand to that window than to the fence? A. Well, it might be a little farther than that, but of course I cannot say exactly.

Q. Isn't it as far as from you to me? A. I don't know, sir.

Q. Do you know how wide the road is there to that point where you saw Mrs. McCloud? A. I don't know it by measurements; it is a narrow road, anyway.

Q. Were you as far from where you are standing to the other side of this room from the lady when you saw her? A. No, sir.

Q. Were you as far as those gentlemen there? A. I think not, — not quite.

Q. As I am now? A. Yes, sir; it might be so far.

Q. And it was dark? A. No, sir; not dark; there was a moon out, and the stars shone very bright, and the electric light — it was a very light night.

Recess until 2.30 P.M.

AFTERNOON SESSION.

The roll of the jury was called, and the prisoner answered to his name.

Cross-examination of ELLEN DEWSNAP — resumed.

Q. (by Mr. DOWLIN). Do you remember, Mrs. Dewsnap, of having had a talk with me? A. Yes, sir.

Q. Do you remember stating that when you were at the rear of

your house that night you saw a team going north along Union Street?

A. Yes, sir.

Q. Do you remember telling me what kind of a carriage it was?

A. No, sir; I didn't see the team.

Q. Did you hear it? A. Yes, sir.

Q. So that you only know that there was a team there by the sound? A. Well, yes, sir.

Q. Do you use glasses, Mrs. Dewsnap? A. I do to read with; yes, sir.

Q. Has your sight failed any in the past few years? A. No, sir; I don't think it has.

Q. When did you commence to use glasses? A. I can't tell you; a good many years ago.

Q. Do you think that you see quite as well in the night as you did when you were younger? A. Yes; I think I can.

Q. Are you sure that the electric light was burning that night? Now, think of this carefully before you answer it. A. Well, of course I cannot be quite sure, but it was quite light, it was; I am most sure it was.

MARY C. SAUER — *sworn*.

Q. (by Mr. HAMMOND). Mrs. Sauer, what is your full name? A. Mary Carrie Sauer.

Q. Where do you live? A. Shelburne Falls.

Q. On which side? A. Buckland.

Q. On which street? A. Ashfield Street.

Q. And which way from School Street? A. You turn to the right, down the hill, towards the depot.

Q. Whether nearer town than School Street? A. Yes.

Q. Which way from Green Street? A. Well, it is half way.

Q. Whether or not you were at your home on Friday, January 7, or at the house of some neighbor? A. Why, I went to call on my sister on School Street.

Q. Where does your sister live? A. On School Street.

Q. What is her name? A. Mrs. Anna Amstein.

Q. Could you turn to the map behind you and find School Street, and find the Amstein house? A. I don't know as I could.

Q. Well, look at the street running to the left. A. Yes, sir. [Showing.] This is where I live, and I went up this way [showing].

Q. It was somewhere in that vicinity? A. Why, here it is [showing].

Q. It has the name on it? A. Yes, right there [showing].

Q. You were at that house. How is it situated with reference to the O'Neil house? A. The O'Neil land joins on the north to the Amstein land.

- Q. The Amstein house, then, is directly south? A. Yes, sir.
- Q. From the O'Neil house? A. Yes, sir.
- Q. At what hour in the evening did you arrive at the Amstein house? A. I started away from home at half-past 6.
- Q. How long did you remain at the Amsteins? A. Well, from the time I started from home till I got back, — it was 8 o'clock.
- Q. When you were at the Amsteins, in what rooms were you visiting? A. In the sitting room.
- Q. On which side of the house is that? A. Well, it is a double room; it faces the east and west.
- Q. And when you were at that house and in that room did any sound come to your ears which attracted your attention? A. Yes, sir.
- Q. And will you describe to the jury fully all that occurred in reference to that matter? A. Why, I sat near the furnace, and it was about 7.07 when the New Haven comes in. I said, "How plain you can hear the bell to-night of the cars." And my sister says — [Objected to.]
- Q. The things that were talked about you need not mention. Say what you heard. A. Well, the sound was a holler, and then a groan.
- Q. And from what direction did it seem to come? A. West.
- Q. How were the windows of that room? A. They were all closed.
- Q. Whether the windows looked towards the west? A. One of the sitting-room windows faces the west and two the east.
- Q. Can you describe any more particularly the sound which you heard? A. Nothing more than it was a sound that frightened me.

Cross-examination.

- Q. (by Mr. BEER). Did you see the time of day when you left your house? A. No, sir; the 8th of January it was dark at half-past 6; the lamps were lit.
- Q. Did you see the clock at the time you left your sister's? A. When I left up there? No, sir; not until I got back home.
- Q. When you left your sister's you did not see the time? A. I looked at the time, and it was half-past 6.
- Q. Do you know what time you arrived at your sister's? A. Well, it was not five minutes' walk.
- Q. You went directly to your sister's? A. Yes, sir.
- Q. Who were sitting in the room with you? A. My sister and her mother-in-law, Mrs. Amstein.
- Q. How near were they to you? A. My sister was not in the room first; she had not got through her work. The old Mrs. Amstein did not sit a great ways from where I sat.
- Q. Did she sit right in front of you? A. I couldn't tell you that.

Q. Are you sure Mrs. Amstein had not entered the room at the time you heard the sound? A. No; she had not got her supper dishes done.

Q. Where did Mrs. Amstein the younger sit? A. That is the one I mean had not got through with her work.

Q. Did she come into the room and sit down and talk with you? A. She came in when I said I heard the noise, and she said — [Objected to.]

Q. Never mind. Did she come in and sit down there? A. After she had her work done.

Q. What time was that? A. I don't know really what time it was.

Q. There were two trains which arrived at that time in quick succession, weren't there? A. Yes, sir.

Q. And you were in the house when you heard some train arrive? A. Yes, sir.

Q. Or some noise of train? A. The New Haven train.

Q. Have you ever denied hearing those sounds, to any one? A. No, sir.

Q. You remember seeing me at one time? A. Yes, sir; I remember when you called at the house.

Q. Didn't you tell me then that you knew nothing about the matter? A. No, sir; I did not.

Q. Didn't you seem surprised that I knew something about some information that you said you had not given out? A. I told you I didn't want anything to say about it, because I didn't want to go.

Q. How many were there in the room when you heard noises? A. Two.

Q. Who were they? A. Old Mrs. Amstein, — the old lady, and myself.

Q. Not two beside? A. Two with myself.

NELLIE BIGELOW — *sworn*.

Q. (by Mr. HAMMOND). Tell us your full name, Nellie?

Mr. BEER. May it please your Honor, we would like to find out the age, and whether this witness appreciates the solemnity of an oath.

SHELDON, J. Well, the first thing is to get her name, and then we will ascertain her age.

Q. Tell us your full name? A. Nellie Bigelow.

Q. How old are you? A. I will be thirteen years old the 16th of October.

Q. Almost sixteen? A. Thirteen the 16th of October.

Q. Thirteen? A. Yes, sir.

Q. And where do you live? A. Shelburne Falls.

Q. And with whom do you live? What is your mother's name?
A. Mrs. Jenkins.

Mr. HAMMOND. Shall I go on? Do they waive the objection?

Mr. BEER. That is all.

SHELDON, J. There is no objection, I understand.

Q. The place where you live is only a little east of Shelburne Falls village? A. What is it?

Q. Do you live up under the hill, a little out of the village? A. Yes.

Q. Do you remember whether there was anything that happened that you heard on Friday, January 8? A. Yes, sir.

Q. And do you remember whether it was the day before they heard Mrs. McCloud was dead? A. It was the day before. Mr. Bigelow came over home the next night and said —

SHELDON, J. Do not tell that, but only say yes or no.

Q. Whether, Nellie, it was the night before you heard of it? A. It was the night before.

Q. Where were you at the time you heard something? A. I was out in the yard, playing with the dog.

Q. Playing with what? A. The dog.

Q. Whether or not it was light, or whether it had begun to be dark? A. It had begun to be dark.

Q. When you were there playing with the dog, if there was anything you heard, tell these gentlemen what it was. A. I heard a noise, and I thought it was wild animals on the mountain.

Q. Can you tell them what kind of a noise it was? A. No, sir.

Q. Can you tell them how the noise seemed to you? A. It sounded as though it was up on the hill.

Q. Can you tell how it affected you, or what you did? A. I ran into the house to Mrs. Bigelow and told her —

Q. Not what you told, but whether you did in fact go into the house. A. Yes, sir; I went right into the house.

Q. And whether you told Mrs. Bigelow something? You need not tell what, but you went into the house, and then did you tell Mrs. Bigelow something? A. Yes, sir.

Q. How many noises did you hear? A. I only heard one.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Now, will you just turn around towards the map there; now, perhaps by explaining to you a little this map, you may be able to tell the jury something. Now, you know where the bridge is in Shelburne Falls? A. Yes, sir.

Q. Now, that represents the bridge, crossing the river right there, — see? A. Yes, sir.

Q. Then you come right along the bridge here, and this is on Bridge Street in front of the hotel. You know where the hotel is? A. Yes, sir.

Q. Now, how do you go from the hotel to get to your home, — up this way? A. Yes, sir; this turn up the street.

Q. Now, how far up this way do you go? You go up by the post-office? A. Yes, sir.

Q. And then you go along up by the old silk mill, don't you? A. Yes, sir.

Q. And then you keep along until you turn on a road that goes toward Greenfield, don't you? A. Yes, sir.

Q. Then how far from the turn that goes towards Greenfield do you go along down this way, about how far? You have played over that ground, — about how far is it? A. I don't know just how far it is.

Q. Now, is it as far from the corner when you turn to go toward Greenfield as it is from the Buckland side of the bridge up to the corner? A. I guess it is about a quarter of a mile.

Q. It is about a quarter of a mile from the turn down to your home? A. Yes, sir.

Q. And then you live away down here a quarter of a mile from the turn? A. Yes, sir.

Q. And you were playing in the back yard, or the front yard? A. In the front yard.

Q. On which side of this road that goes towards Greenfield, on this side or on that side, is your house, on the upper or lower side?

Mr. KNOWLTON. If the only purpose is to get the exact location, there are plenty of witnesses, I think, who can fix it and get the distance a good deal better, — if that is the only purpose. I expect Mr. Kendrick is going to be called by and by, and I guess he knows just where the house is.

Mr. DOWLIN. Well, I should object to distances without they were measured; but I wanted to get the idea of this witness who lived at that particular spot —

Mr. KNOWLTON. I didn't mean to interrupt you.

Mr. DOWLIN. — where she was playing at the time she heard this noise, so that the jury would understand it.

SHELDON, J. Well, there is no objection to the question, simply a suggestion to you. There is no objection to the question, if you wish to put it.

Q. Now, on which side of the road is your home, on the upper side? A. On that side.

Q. Do you know the points of the compass, north and south? A. Yes, sir.

Q. In going towards Greenfield, in going from Shelburne Falls, is it on your right-hand side or on your left-hand side? A. On my right-hand side, going to Greenfield.

Q. Going to Greenfield it is on your right-hand side? A. Yes, sir.

Q. That is on the lower side of the road, is it? Do you know where Mrs. McCloud was found? Have you ever been up to the spot? A. No, sir.

Q. Then all you know is that some time just after dark on that Friday night, January 8, you heard a noise coming from the Buckland side of the river towards you? A. Yes, sir.

Q. It came from the back of your house somewhere. That isn't the only time that you were ever out at play, was it, in your yard, just as it was getting dark? A. I used to be out every night playing.

Q. Well, you have heard noises before, haven't you? A. No, sir; not that sounded like that.

Q. Never heard anything like it before. You don't attempt to state from what particular direction that came, do you? A. Well, it came from the west side.

Q. Came from which way? A. East.

SUSAN BIGELOW — *sworn*.

Q. (by Mr. HAMMOND). Mrs. Bigelow, what is your own name? A. My name?

Q. Your given name? A. Susan.

Q. Mrs. Susan Bigelow. And you live in Shelburne Falls on the Shelburne side? A. Yes, sir.

Q. And about how far out from the village? A. About half a mile, I should think.

Q. And you are Mrs. Storey Bigelow? Your husband's name is Storey Bigelow? A. They got my name wrong on the paper; they didn't get it right.

Q. Whether or not the little girl, Nellie, lives with you? A. Yes, sir.

Q. Do you recollect the events of Friday evening, January 8? A. Yes, sir.

Q. Do you recollect the little girl's coming into the house at any particular time? A. Yes, it was a little after 7.

Q. Do you recollect her giving you a statement of what had occurred immediately before her coming in? A. Yes, sir.

Mr. PARKHURST. We object.

SHELDON, J. The question whether she remembers the giving of

that statement is competent to fix the time; of course the statement itself is not competent, but that is not asked for.

Q. And about what time was it that the little girl came in in that way.

Mr. PARKHURST. I think I should object to that.

THE WITNESS. I don't know exactly, but a little after 7.

Mr. PARKHURST. I think I must object to the question as it was put. SHELDON, J. You mean you want to save it?

Mr. PARKHURST. If you please.

Q. And what was the time? A. A little after 7.

[No cross-examination.]

LEWIS S. MERRILL — *sworn*.

Q. (by Mr. HAMMOND). You live in Shelburne Falls on the Shelburne side? A. Yes, sir.

Q. And whether or not the place of your home was shown to the jury on the view, — whether the jury came to your home the other day? A. Yes, sir; they did.

Q. And whether you were there at your home? A. I was.

Q. And whether the place where the jury saw you was the place you live? A. Yes, sir.

Q. And whether you lived at that place on Friday, January 8 last? A. Yes, sir.

Q. Whether there was anything that came to your hearing on the evening of Friday, January 8, which attracted your attention, and, if so, will you state to the jury fully all about it? A. On that evening, as I was going about my barn chores, I went out and cleaned out the stables, horse and cow, and then I took my lantern and basket and went to the basement below, where I keep leaves for bedding, and got a basket of leaves, and came out, fastened the basement door and started for the barn. As my back was turned to the village, I heard a voice, — some one call. I turned to see what it was, and as I turned I heard it once more. Before I faced to the village, I heard three more calls, and all was still. I could see nothing where the voice came from. It attracted my attention.

Q. Can you describe the calls? A. It sounded as much like the word "help" as anything I could place it.

Q. Can you state to the jury the direction from which the sound seemed to come? A. It came from the other side of the river, in the neighborhood of Crittenden road.

Q. How long have you lived in the place you now live? A. It will be thirty-one years this fall.

Q. Do you know whether in fact sounds from that vicinity can be heard at your home? A. Yes, sir.

Q. Whether you have heard them previously? A. Yes, sir.

Q. But this time, the voice you heard on this Friday night, whether it seemed to be the voice of a man, or woman?

Mr. BEER. That is objected to. He should describe what he heard.

SHELDON, J. I don't think that question is objectionable in form.

Q. Will you state? A. I couldn't say as to that positively. I never heard such a voice before.

Q. Can you give the time? A. About 7 o'clock; not far from 7 o'clock.

Cross-examination.

Q. Do you live on the road that leads from Shelburne Falls to Greenfield? A. Yes, sir.

Q. And after you make the turn from the Shelburne Falls street, you live on the right-hand side of that road? A. Yes, sir.

Q. Going towards Greenfield? A. Yes, sir.

Q. How far from the road is your house and barn situated? A. It might be fifty rods; I could not tell the distance exactly.

Q. In looking south-westerly from the easterly side of your barn, where you said you stood that night, up here [showing], and heard that sound coming from the Crittenden road, would your glance, would your eyes, carry you across the dam here of the river, across the railroad track, and almost in a line with that pointer, similar to that? A. It crosses the lower part down here.

Q. Crosses the lower part of the dam, and the railroad track. And how many railroads that run into that station? A. Two different companies.

Q. And 7 o'clock is about train time for what road? A. Seven minutes past 7, the New York & New Haven, I think.

Q. And which track is the nearest to your home, the New York, New Haven & Hartford, or the Fitchburg? A. Both the same track, — both come in on the same track.

Q. Could you distinguish the difference in that voice between the word "hello" and "help"? A. No; I couldn't be positive.

Q. So that it might have been "hello," as well as "help," mightn't it? The sound that you heard? A. I couldn't tell fully as to that.

Q. Now, you only knew the direction from which that sound came. You didn't know the exact location from which it issued, did you? A. I couldn't tell the spot exactly; no, sir.

Q. You're not willing to swear, are you, that the sound came from away over on the Crittenden road, and was so distinct that you almost believed it was the word "help"? A. It sounded as near to the word "help" as anything, or "hello," — the two.

Q. Have you ever been to the place where the body of Mrs. McCloud was found? A. Never.

Q. Have you ever had it pointed out to you? A. No, sir.

Q. Do you know, from what you have heard about the location, that it was found on the Crittenden road? From your general knowledge of the country there? A. It was across there where they said, and that is about the place where the sound came from.

Q. And from where you believe the body was found, how far do you think it is to your home? A. I should say somewhere about half a mile. I never measured it.

Q. Do you remember the condition of the river that night, or about that time, when you claim to have heard this sound, whether it was frozen over, or not? A. I don't think it was, but I can't tell certainly.

Q. So that I understand that you desire to say that somewhere about 7 o'clock you heard a noise that you couldn't tell the difference between "hello" or "help," but it was an outcry of some kind that came from over on the hill side there while you stood in the yard? Is that correctly stated? A. I think so.

ANNA B. JACKMAN—*sworn*.

Q. (by Mr. KNOWLTON). Mrs. Jackman, what is your whole name? A. Mrs. Anna B. Jackman.

Q. Which side of the river do you live on? A. Buckland side it is.

Q. What street, please? A. Conway Street.

Q. Conway Street? A. Yes, sir.

Q. I do not see it on the map. A. Well, Summer Street, some call it; it is on the Conway road.

Q. Is it south of the main village, or northerly? A. It is south it is the lower end of the village.

Q. See if you can tell anything by the map around behind you. Here is the back road up to Crittenden's, here is the old Ashfield road, and here is the Ashfield road, and here is what they call—is that the same thing? A. No, sir; it isn't on that road.

Q. That is the old Ashfield road there. Oh, there it is there, — Conway Street, — down here? A. Yes, sir.

Q. How far from the depot do you live? That [indicating] is the street? A. Yes, sir.

Q. That is only the beginning of it, and it runs down so, — nearest the river? A. Yes, sir.

Q. How far from the depot is it, about? A. It is a quarter of a mile, I should think; I don't know as it is as far as that.

Q. And do you remember the night before the morning that Mrs. McCloud's body was found? A. Yes, sir; I do.

Q. Where were you that evening? A. I was at home.

Q. And between 7 — or about 7, where were you? A. I was at home.

Q. Well, whereabouts in the house? A. In the kitchen.

Q. And sitting down or walking around? A. Yes, sir; I was sitting down some.

Q. I can't hear you. A. Sitting down.

Q. Whereabouts in the room? A. Near the window.

Q. Was the window closed? A. The window was closed then.

Q. Did you open it? A. I did, sir.

Q. And after the window was opened, did you hear any unusual sound? A. I did.

Q. Where were you? Were you then sitting down? A. No, sir; I was at the open window, taking the clothes from the line.

Q. Was this upstairs, or down-stairs? A. It was upstairs, the second story.

Q. That is, one of these lines out of the second-story window? A. Yes, sir.

Q. You were standing at the window? A. Well, I had my head from the window, taking clothes from the line.

Q. Won't you describe that sound as well as you can to the jury, so that they can understand what it was? A. Well, it would be hard describing it, because it would be such a heart-rending sound.

Q. And were you still at the window when you heard the second one? A. I was, sir.

Q. Do you know what direction it came from? A. It came from the direction of the murder.

Q. Well, that of course is a very natural answer. Do you mean by that the direction where the body was found the next day? A. Yes, sir; that is what I mean.

Q. You did not hear but two? A. No, sir.

Q. You cannot give any more description, — perhaps you have given all there is to give about it. A. That is all.

Q. Not long, — heart-rending? A. Yes, sir.

Q. Do you know what time of the evening that was? A. Yes, sir.

Q. What time was it? A. Twenty minutes past 7.

Q. Did you have some occasion to know the time? A. Yes, sir; I remember it because the train was late the night before, and was on time that night.

Q. You went by the train? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). How far down Conway Street do you live from Ashfield road? A. Well, I couldn't tell exactly, but it is about half way, — the Ashfield road, about half way from where I live from the depot.

Q. Do you live beyond the cutlery works? A. Yes, sir; just below.

Q. You live east of the cutlery works? A. Yes, sir.

Q. If I remember correctly, there is a steep hill that runs up from this Conway road to the railroad tracks, isn't there? A. Yes, sir.

Q. And that hill is almost perpendicular, isn't it? A. It is.

Q. No road runs up it? A. It is from the cutlery across on to the

Q. This Conway road runs along the base of that hill, almost a level with the river, — no, it is higher than the river; almost, just a trifle higher than the river. The river was not frozen over that night, was it? A. No, sir; I think not.

Q. The water was running over the dam, wasn't it? A. Well, it wasn't up there, and don't know; but I think it was.

Q. The last time you passed by it, do you remember whether the water was running over the dam? A. I don't remember, for I had no occasion to notice it.

Q. The railroad tracks are just above your house, aren't they? A. But a few rods.

Q. How far is it from your house to the place where Mrs. McClougherty was found, to the best of your knowledge? A. It is not half a mile.

Q. Not half a mile? A. No, sir.

Q. Somewhere about half a mile, you should judge? A. I should say it was.

Q. In which direction does the window open? A. It opens to the side next to the railroad.

Q. Towards the side towards the railroad? A. Yes, sir.

Q. How far is that side of your house from the bank that runs along the railroad track? A. Well, I couldn't tell; but I should say it was ten or fifteen rods, perhaps more.

Q. Ten or fifteen rods? A. I should think so.

Q. Did that sound remind you any of the shriek of a locomotive that you ever heard? A. No, sir; it did not.

Q. Could you distinguish distinctly the words? A. No, sir; there was no word.

Q. An outcry? A. An outcry; yes, sir.

Q. Could you tell whether it was "hello" or "help"? A. It sounded more like "help."

Q. It could have been "hello," couldn't it? A. No, sir.

Q. Could not? A. No, sir.

Q. Then you distinguish it so you think it was "help"? [No answer.]

Q. Who was the first one you talked with about hearing these noises? A. Well, I didn't say anything about it for a long while, for I didn't want to get into it at all.

Q. Well, to whom did you first disclose this statement? A. Am I obliged to answer that question?

SHELDON, J. Answer the question.

THE WITNESS. Well, one of the neighbors was in after the hearing they had here, telling of the rest of them hearing the screams that night, and then I said —

Q. I don't ask what you said, I asked who was the first person. Give me the name, please. A. Why, I spoke about it home. I told Mr. Amstein, I think was the first one I said it to.

Q. When was that? A. I think it was the day Mr. O'Neil had his hearing.

Q. Have you testified in this case before the grand jury? A. No, sir; I have not.

Q. Have not testified anywhere before except here to-day? A. No, sir; I have not.

Q. How do you know that it was 7.30? A. I know by the clock. I know that the train comes at that time, at 7.20. Oh, excuse me. I know because the train was on time that night, and the night before was an hour and twenty minutes late. The boy came soon after with the mail, and I got up and went into the sitting room, and it was half-past 7.

Q. And it was about ten minutes before that you heard this outcry? A. Yes, sir.

Q. When was it with reference to the coming in of that train, — before, or after? After the train came in, or after it went out? A. After it went out. The train had left the depot.

ANNA E. MORSE — sworn.

Q. (by Mr. KNOWLTON). What is your full name? A. Anna E. Morse.

Q. You live in Buckland? A. Yes, sir.

Q. In the village? A. In the village of Shelburne Falls.

Q. Did the jury go to your house last Monday? A. Not to the house, — they passed it.

Q. What street is the house on? A. Ashfield Street.

Q. Next south of the school-house? A. Yes, sir; next to it.

Q. Does that look like the place there on the map? There is the school-house, and there is Morse, it says. A. Yes, sir.

Q. That is the house, is it? Can you look up the back road, or is it just out of range to look up the back road? A. You can see up there a distance, — a short distance.

Q. Were you down street that evening? A. Yes, sir.

Q. At any time did you see Hattie McCloud? A. I did.

Q. Where did you see her? A. I first met her about half-past 5, in Mr. Amsden's dry goods store.

Q. Did you see her again? A. I did.

Q. Where did you see her next time? A. I met her nearly opposite of the silk mill, about five minutes after 6, going up the street.

Q. The silk mill? A. On Bridge Street.

Q. And which side of the river is that? A. On the Shelburne side.

Q. I haven't heard of the silk mill before. A. It is very near the joining of Mechanic with Bridge Street.

Q. Oh, up there? A. Up there.

Q. Which way was she going? A. Going up the street, as I was coming down.

Q. Did you notice whether she had any parcels with her at that time? A. I did not.

Q. Did you see her to know her? A. Yes, sir.

Q. Where did you go then? A. I did one or two errands on the street, and then went home.

Q. And what time did you get home? A. About 6.30.

Q. Six-thirty. And have you any way of fixing the time when you saw her at five minutes past 6? A. Yes, sir.

Q. What is it? A. The 6 o'clock whistle blew, — the peg shop whistle, just about the time I passed from Severance Street down on this street; that is two streets above there.

Q. You were coming west, were you? A. Yes, sir.

Q. That is, you were pointed towards your home? A. Yes, sir.

Q. And this was, you think, five minutes after the peg shop whistle blew? A. Not later than that.

Q. Did you go out again that evening? A. Yes, sir.

Q. What time was that? A. At 7.30.

Q. And have you any way of fixing that time? A. I looked at the clock as I went out of the house.

Q. Did you have any occasion to look at the clock? A. Yes; I was going —

Q. I don't ask you what it was. A. Well, I had occasion.

Q. Did you have some talk with your mother? A. Yes, sir.

Q. Was it in consequence of that talk that you looked at the clock? A. Yes, sir.

Q. And did you look at the clock just as you went out? A. Yes, sir.

Q. When you went out of your house, that brought you on to Ashfield Street? A. Yes, sir.

Q. Did you see any person there? A. I did.

Q. A man, or woman? A. A man.

Q. Where did you see him? A. Just as I came out of the house he was turning the corner onto Ashfield Street from over this road here [showing], just this corner.

Q. Won't you point what corner you mean? A. About in here [showing].

Q. Off this road? A. Yes.

Q. And which way was he going? A. He was going down the street in this direction [showing].

Q. That was just as you came out of the house? A. Yes, sir.

Q. How was he going, in what way was he going? A. He was walking right rapidly when I first observed him.

Q. Which way did you go? A. I went down street.

Q. Ahead of him, or behind him? A. I was about half a rod ahead of him.

Q. Did he keep on his rapid gait, or slow down? A. He walked slow.

Q. Did he remain the same distance behind you, or go slower, or faster? A. About that distance, I should say, all the way down street.

Q. Did you see him after you got started? A. Yes, sir.

Q. How many times did you see him? A. I think I looked around before I reached the railroad crossing about three times.

Q. When you looked around, did you see him? A. Not to get good view; he turned his head every time I looked round.

Q. So you didn't see his face? A. No, sir.

Q. How far behind you was he when you looked round? A. Just about half a rod, I should say.

Q. Did you change your gait? A. I walked slower, hoping he would pass by me, and then hurried along a little faster when I saw that he did not.

Q. Did he keep behind you that same distance? A. He kept behind me that same distance, as nearly as I can tell.

Q. When you first met him, was he going faster or slower than when you got in ahead? A. Faster.

Q. Very much? A. No, sir; quite a rapid walk.

Q. Where did you go to? A. I went to the Methodist church.

Q. That is near Amstein's store? A. Yes, sir.

Q. Was this man behind you when you got there? A. No, sir.

Q. What became of him? A. Where Clement Street joins the other street he passed on east to go over the bridge, and I went on towards the church.

Q. You mean he started across the road? A. Yes, sir; I didn't see whether he reached the bridge, or not, but he started across the street.

Q. How was he dressed? A. He had on a long coat that reached nearly to his heels. The collar was turned up around his neck. I cannot say what he had on his head; I did not notice.

Q. How large a man was he? A. A tall man, well-built man.

Q. Did you know who it was? A. I did not.

Q. Did you have any opinion as to who it was? A. I did not.

Q. Could you now place an opinion as to who it was? A. No, sir.

Q. Are you acquainted with Mr. O'Neil, — that is, do you know him when you see him in the daytime? A. Yes, sir.

Q. Could you say how this man's appearance, its correspondences or differences were, as compared with Mr. O'Neil? Was he taller, or shorter? A. I should say about the same height.

Q. And as to his build? A. It would seem the same to me, — about the same.

Q. Did you see any one else as you walked up the street there? A. No, sir.

Q. Did you see any person cross the street anywhere? A. Not that I can be certain of. I have an impression of some one crossing the street and turning off where the State road joins the other road, but I am not sure about it.

Q. You did not see who it was? A. No.

Q. Did you take any notice of that person? A. No, sir.

Q. Did you see Mr. O'Neil afterwards? A. That night?

Q. Yes, that night. A. Oh, no.

Q. Did you see Mr. O'Neil after that night? A. I saw him the next morning.

Q. Where did you see him the next morning? A. On this corner of the bridge.

Q. Did anything happen? A. I don't know that anything happened; he looked at me very sharply on the bridge.

Mr. PARKHURST. Well, now, I don't think that answer ought to be taken.

SHELDON, J. That answer is not responsive.

Mr. PARKHURST. I think that should be stricken from the record.

Mr. KNOWLTON. I think it was intended by her to be responsive. It may not be much of a happening, but it is what I called for. Shall the answer stand?

SHELDON, J. If it is the answer you expected, it may stand.

Mr. KNOWLTON. Yes, sir; that is the answer I expected.

Mr. PARKHURST. I don't see how he could expect such an answer to the question as it was put.

SHELDON, J. Well, the fact itself is competent.

Mr. KNOWLTON. Perhaps I put it awkwardly; I ought not to lead.

Q. You said nothing to him? A. No, sir.

Q. Nor he to you? A. No, sir.

Q. Did you have any, — did you see him yesterday? A. See him yesterday?

Q. Mr. O'Neil. A. Yes, sir.

Q. Where? A. He was brought out of the court room.

Q. Where were you? A. Standing in the portico down there.

Q. And what happened, if anything, then? A. I then thought he looked sharply at me.

Q. Anything else? A. No, sir.

Q. Did you go straight from your house down there, or did you stop on the way? A. At which time?

Q. This time, the half-past 7 time, when you say you know you left your house at half-past 7. A. I went straight down there.

Mr. KNOWLTON. That is all.

Mr. PARKHURST. That is all.

JULIUS PFERSICK — *sworn*.

Q. (by Mr. KNOWLTON). Julius Pfersick is your name? A. Yes, sir.

Q. You live in Shelburne Falls? A. Buckland.

Q. On the Buckland side? A. Yes, sir.

Q. And do you remember the evening before Mrs. McCloud's body was found? A. I do.

Q. Beg pardon? A. I do.

Q. Do you know the defendant, Mr. O'Neil? A. Yes, sir.

Q. Did you see him that evening? A. I did.

Q. What time of the evening was it that you saw him? A. I put the time about between quarter and 8 o'clock, — quarter to 8 and 8 o'clock.

Q. That is when you put it? A. Yes, sir.

Q. And where did you see him? A. I met him at the east entrance going into the Woodward House.

Q. That is, who was at the east entrance, you, or he? A. I was going one way and he the other.

Q. Which way was he going? A. He was coming down from the railroad track.

Q. And which way were you going? A. I was coming up.

Q. This was on Ashfield Street, or the State road? A. I don't know what that means.

Q. Well, the big street that goes up. A. Goes by the railroad crossing?

Q. And goes by Ward's store and Amstein's store. A. Goes up that way.

Q. The street next the river? A. Yes, sir; I believe they call it Exchange.

Q. Yes; I think I heard somebody else speak of it as Exchange. See if you would recognize that plan by looking at it. Some men can, and some cannot. Here is the railroad, this is the State road, and that is Ashfield Street; goes over the grade crossing and over the hill; here is Green Street and Ward's corner and Amstein's corner. A. That is Clement Street?

Q. Yes, sir; and that is the Woodward House? A. Yes, sir; that is the street I was on.

Q. Which way were you going? A. I met him about in here. This is the State road.

Q. This is? A. I turned off the State road and he was coming down this road.

Q. Which side of the street did you meet him on? A. I met him on the right-hand side going up.

Q. Point there which side you mean. A. On that side [indicating on map].

Q. That would be the hill side, not the river side? A. The hill side; yes, sir.

Q. And he was going north, you say? A. Yes, sir; as near as I can put it.

Q. Did either of you speak? A. Yes, sir.

Q. Had you left the sidewalk? Was it on the sidewalk that he was walking? A. He was walking on the sidewalk; yes, sir.

Q. Had you left the sidewalk before he spoke to you? A. Yes, sir; I just turned off.

Q. That is, turned off toward which direction? A. To go up the State road.

Q. And what was said? A. Well, I met him and he says, "Hello, Hex, where are you going?" Says I, "I'm going home." He says, "What is the matter?" Says I, "I don't feel well," and he mumbled something, and there was nothing more between us.

Q. "Hex" is a name that you are sometimes called by? A. Well, I am sometimes called that way.

Q. Yes, you answer to it sometimes. Where was he when he spoke to you? A. Out on the street, just crossing over.

Q. Did you see anything of a woman near him? A. There was

a young lady went up ahead of him ; that is the only lady I remember seeing.

Q. That is, going your way? A. Yes, sir.

Q. Do you remember of seeing a woman going the other way? A. No, sir ; I don't.

Q. Are you able to say whether there was or not? A. No, sir ; I couldn't say.

Q. Where did you see him? A. I met him on the same sidewalk a little ways, — a little bit nearer towards Ward's store, towards Clement Street.

Q. You crossed over to go up the State road? A. Yes, sir.

Q. What did you do then? A. Went up as far as the grist mill.

Q. Where is that, as far as the depot? A. Not as far as that. It isn't on the map. Here is the State road here.

Q. Is it down as far as the depot, or up that way, or down that way? A. Well, I don't know as you would call it really as far as the depot.

Q. You didn't go as far as the depot? A. No, sir.

Q. Then where did you go? A. I got as far as the State road, and changed my mind, and thought I would go back to the Woodward House ; got as far as the grist mill on the State road.

Q. And then you thought you would go to the Woodward House? A. Yes, sir.

Q. Then what did you do? A. I went back, went up to the Woodward House. I was thinking about going in, and I stood a little while kind of, — well, didn't get very close to the windows, perhaps the length of the room from them, and tried to see if there was anybody I recognized, but I couldn't ; it was kind of frosty, and I couldn't recognize the people where I was standing. I stood there a while and went back again, thought I wouldn't go in ; I went down toward Ward's corner, and as I was going down, met Kendrick.

Q. When you stopped at the Woodward House did you go in the Woodward House yard, or did you stay in the street? A. I was in the yard, away up almost to the corner of the building, within thirty or forty feet of it.

Q. And looked into the windows? A. Not exactly ; I stood off a distance and looked in.

Q. Then you changed your mind again and went on north? A. Yes, sir.

Q. Then you met Kendrick? A. Yes, sir.

Q. Which way was Kendrick coming? A. Appeared to me as though he was going home ; going up towards the depot, up Ashfield Street.

Q. When you met him, how near Ward's corner was it you met

him? A. Well, I don't know exactly; it was about half way between the entrance of the Woodward House and Ward's corner I met him, I should say.

Q. Going south? A. He was going south; yes, sir; I was going north.

Q. Did you speak to him? A. No, sir; I did not.

Q. You know him? A. I know him, but I didn't speak to him that evening.

Q. Did Kendrick have anything with him? A. He had something in his hand, I don't know whether a pail or a milk can or something like that.

Mr. KNOWLTON. There is another subject entirely that I desire to question this witness about. I feel in honor bound to state to your Honors about it. My purpose was to call him in connection with other evidence. But if your Honors think that is not the proper course, I will ask him that now. It has no connection with the matter I have been asking him about now; it is a transaction of the next day.

MASON, C. J. We think that the court is not disposed to anticipate the matter.

Cross-examination.

Q. (by Mr. BEER). Where had you been, Mr. Pfersick? A. At what time?

Q. When you first saw O'Neil that night? A. Well, I had been standing at Ward's corner from about 7 o'clock, I should think, until the time I met O'Neil.

Q. Had you been across the river? A. No, sir; I had been across early in the evening.

Q. What was the time that you did see him? A. Mr. O'Neil? Well, I put the time between ten minutes of 8 and quarter of 8, something like that; between that and 8.

Q. Point on the map exactly where you saw him. A. Well, I couldn't do it exactly.

Q. Please look around. You know the Woodward House? A. Yes, sir.

Q. You know the driveway running easterly? A. Yes, sir.

Q. From the bar room? A. Yes, sir.

Q. And a tree there? A. There are two or three of them there.

Q. A large tree? A. I think there is one or more.

Q. Now, where, in reference to the tree near the driveway, was it that you saw O'Neil? A. Well, I don't know which tree you mean. There is trees near the bar room, and trees out near where the driveway turns in.

Q. Well, at the driveway from the State road. A. From Exchange Street, I call it.

Q. Do you remember a tree being there near the driveway that turns in from Exchange Street? A. Yes, sir; a maple tree right at the corner.

Q. How far was it from that tree that you saw him? A. Well, I couldn't say exactly. I should put it probably, — it might have been thirty feet or might have been forty.

Q. Which side? A. I met him right on the sidewalk; there is only a sidewalk one side of the street. Oh, I met him above coming down the hill between that and the railroad.

Q. Were you on Exchange Street, or on the street going out to the cutlery? A. When I met him?

Q. Yes. A. On Exchange Street.

Q. And how soon after meeting him did you turn into the other street? A. The State road?

Q. Yes. A. I was just crossing over Exchange then to get on the State road; was just crossing.

Q. Did you see any woman there? A. I didn't see no woman, only the woman I spoke about went up ahead of me, — only one I recollect seeing.

Q. You were going up the hill? A. Yes, sir.

Q. Then you turned off to go up the State road? A. Yes, sir.

Q. How do you know whether it was 8, or ten minutes to 8, when you first saw him? A. I set the time by the mail that evening. I stood at the corner there and some one came along, — I am not certain that same night or not, — and they made the remark —

Q. I am not asking you for the remark. A. You asked me how to set the time, and I was trying to tell you.

Q. Did you hear the mail train come in? A. I don't remember as I did.

Q. Did you go to the mail? A. No, sir.

Q. Then it is your best judgment only that that is the time? A. That is all; judging by the mail train and what I hear other people say.

Q. You had, therefore, no means of knowing of your own knowledge whether it was quarter-past 7 or quarter to 8, from any timepiece that you consulted? A. Not regarding no timepiece; no, sir.

Q. Or any other way? A. Yes, sir; I had. I saw the crowd come from the post-office after the mail was changed; I noticed that.

Q. Do you know of your own knowledge the mail was changed? A. Was pretty certain; saw a number of people come out of the post-office.

Q. You were not on the Shelburne Falls side? A. I was on the Buckland side.

Q. And near Ward's corner all the time? A. Yes, sir.

FRANK D. KENDRICK — *sworn*.

Q. (by Mr. KNOWLTON). What is your whole name? A. Frank D. Kendrick.

Q. The jury saw your house when they were there Monday? A. I should presume so; I don't know.

Q. You can point it out easily on the map behind you, I guess. [Witness locates his residence on map.]

Q. It is the one overlooks the village so plainly on the back road? A. Yes, sir.

Q. You were one of the selectmen at this time? A. I was at that time; yes, sir.

Q. You remember the morning Mrs. McCloud was found? A. Yes, sir; I do.

Q. The night before, were you down street? A. I was.

Q. Do you know Mr. O'Neil? A. I do.

Q. Did you know him then? A. I did; yes, sir.

Q. Did you see him that night? A. I think I did.

Q. Where did you see him? A. On the bridge between Shelburne and Buckland, on the south sidewalk, some ten or twelve feet on the Buckland side.

Q. What was he doing? A. Leaning over the railing with his hands on the railing, looking down into the water as I came on the bridge.

Q. Will you point on that map about where it would be? A. Right about in there, sir [indicating].

Q. On the Buckland side? A. Yes, sir; on the south sidewalk.

Q. What time was that? A. I passed directly into Shelburne and went to the post-office building, up stairs, left some milk in Juan Wood's, went to the post-office, and came around and buttoned up my coat, and looked at the clock and it was twelve minutes of 8.

Q. After you looked at the clock, and it was twelve minutes of 8, what did you do? A. I went directly home.

Q. Did you see Mr. Pfersick on the road? A. I did not.

Q. When you went home did you have anything with you? A. I had one or two or three milk cans.

Q. That was the only time you were down street that evening? A. No, sir; I went home and harnessed a young horse I was breaking, and drove down.

Q. That was the only time you were down on foot? A. Yes, sir.

Q. Is that the only time you passed down that sidewalk by the bridge, by the Woodward House, by the State road to your house on foot? A. Yes, sir.

Q. You saw O'Neil, as you have said, leaning over the bridge?
A. Yes, sir.

Q. What happened? A. I addressed him; said "Hello, Jack." He said, "Hello, Frank," straightened up, and we walked across the bridge together. Do you wish the conversation that ensued?

Q. Yes. A. We spoke about the river freezing over. I said, "How rapidly the river froze over, Jack;" and he said, "Yes," it had broken up and frozen over the second time. I spoke about the shops running nights, and lighted. He said, "I wish I could get work there." I said, "Why don't you get work there?" He said, "I tried; went there to Oakman, but I could not get a job there; hadn't got a pull there, and cannot get work." We walked over to Johnny March's barber shop.

Q. Where is that? A. Just by the horse-car tracks. There he stopped, and I continued to the post-office.

Q. Was he alone when you first saw him? A. He was; no one near him at all.

Q. Was he alone when you left him? A. There were several other fellows in and around the barber's shop; I couldn't say who they were.

Q. Do you remember how he was dressed? A. I wouldn't want to describe accurately his clothing. I think he had on a long, dark coat. I don't know as I could describe accurately his clothing.

Q. Remember how his collar was? A. No, sir; I don't.

Q. When you left him then, you went where? A. Up one flight of stairs and left some milk to Juan Wood's; saw no one there; went directly down to the post-office, looked in my box and glanced at the clock and it was just twelve minutes of 8.

Q. And then, if I understand you, you pursued your course directly home? A. Yes, sir.

Q. In going home, did you go by the Woodward House? A. No, sir; I passed obliquely across the macadam road, over where the crossing is and up Ashfield Street, on the direct route home.

Q. Won't you point on the map where you went? A. I came across the bridge, came to the sidewalk here, right over to the Odd Fellows' building, corner there, up this street to Ashfield Street, up to that corner that is the Ashfield road, up around there, to my house there.

Q. Then you misunderstood my question. My question was if you went by the Woodward House? A. No, sir; I did not.

Q. You went by the yard of the Woodward House? A. We don't call it going by the Woodward House, going up Ashfield Street, as that stands on Clement Street.

Q. You left the yard of the Woodward House on the right as you went by? A. Yes, sir; as I went home.

Q. Do you remember what kind of a night it was that night, Mr. Kendrick? A. I should say, from memory, not a very dark night.

Q. Clear night? A. I think so.

Cross-examination.

Q. (by Mr. DOWLIN). Where do you work? A. Down on the Odd Fellows' building, a place known as Ward's grocery store.

Q. At what time on Friday night, January 8, did you leave the store? A. A minute or two before 6 o'clock, sir.

Q. By what route did you go? A. I went directly up Ashfield Street from the railroad crossing, — would you like me to outline it on the map, sir?

Q. Yes, point out on the map. Please stand one side, so the jury can see. A. I went right up this street from the railroad crossing round there where you come to the Catholic church. Turn to the right. Here is the Ashfield road, leading up here. Here is the Ashfield road. This leads to another house out in that section. To my home there.

Q. What did you do when you came home? A. I went to doing my chores, sir.

Q. Were you the one to close the store? A. No, sir; not at that time.

Q. Who was left behind to close the store? A. Mr. Ward's son, Clarence, locked up at that time.

Q. Did you know Mrs. McCloud? A. I did; yes, sir.

Q. Had she been in your place of business? A. Yes, sir.

Q. When was the last time she was in your place of business? A. I could not say positively; she had not been a regular trader there for somewhere near a year.

Q. Are you certain? A. She traded at Mr. Amstein's.

Q. Do the O'Neil family trade at your store? A. They do; yes, sir.

Q. Do you remember some time about the time that you left of one of the O'Neil children coming into the store that night? A. I couldn't say positively, sir; they might and might not.

Q. Do you remember waiting on one? A. Not that I remember, sir; still, I might have waited on him; I don't think I did.

Q. What did you say you did after you got home? A. I went out about my chores, sir, at the barn.

Q. Now, when was the first time you left home after you reached home? A. Twenty minutes past 7.

Q. Did you leave home a-foot the first time? A. Yes, sir.

Q. And which way did you go to the village? A. I came down the road leading from my house into Ashfield Street down this line here [showing], down Ashfield Street, down to the railroad crossing.

Q. Just above your home there is indicated on the map an old cart road leading up towards the place where Mrs. McCloud's body was found. Is that correct? A. I think it is; yes, sir.

Q. How far is your home from the place where Mrs. McCloud's body was found, in a straight line, would you judge, Mr. Kendrick?

A. Well, I don't know; it might be fifty or seventy rods; I never measured to know positively, sir.

Q. Are you sure it was twenty minutes past 7 when you left home?

A. Yes, sir; I am.

Q. While you were at home, did you hear any unusual outcries?

A. No, sir; I didn't.

Q. You heard no noise? A. No, sir.

Q. Nothing unusual that would attract your attention? A. No, sir.

Q. And how long did it take you to walk from your home to Ward's corner? A. Well, when I go directly, I spend anywhere from twelve to fifteen minutes in going back and forth, according to how tired I am and how rapidly I endeavor to walk.

Q. How tall are you? A. Six foot, sir, in my shoes.

Q. What kind of a coat did you wear that night? A. I wore a light-colored reefer, lined with lamb's wool.

Q. When you came down the hill that night, did you walk slowly or rapidly? A. I couldn't say positively; probably a medium gait.

Q. Do you remember meeting on the bridge any person or persons when you were crossing the bridge? A. No one that I can recognize; I might have met several persons, I would not say how many, or who they were, for I would not recall them.

Q. You would not swear positively as to the time when you met O'Neil, would you? A. Well, I would swear that I went directly from that point to the post-office, and I would swear that it was eight or ten minutes to 8 when I left the post-office.

Q. That is, you would swear it was that time by the clock in the post-office? A. Yes, sir.

Q. You didn't look at your own watch? A. No, sir; not to take notice of it.

[George Heathcote, called as a witness, did not respond.]

SAMUEL B. LELAND — *sworn*.

Q. (by Mr. HAMMOND). You live in Shelburne Falls? A. I do.

Q. Have you any middle name? A. Benjamin Leland; yes, sir.

Q. Give your whole name. A. Samuel Benjamin.

Q. Where do you live? A. Shelburne Falls.

Q. Which side? A. Shelburne side.

Q. What is your occupation? A. Mechanic.

Q. Do you know John O'Neil, the prisoner? A. I do.

Q. Did you see him on Thursday, January 7? A. Not that I remember of; no, sir.

Q. Did you see him on the day before Mrs. McCloud was reported to have died? A. I did.

Q. Where did you meet him in the morning? A. Mr. Ward's store.

Q. At about what time in the day did you meet him there? A. Somewhere between 8 and 10.

Q. And whether or not that was on Thursday morning? A. I thought it was Friday morning; I couldn't remember.

Q. Well, what was the occasion of your meeting him there? A. I came along and met him there.

Q. From what place did you come? A. The cutlery.

Q. Were you coming from the cutlery at that time in the morning? A. I was.

Q. And where did you meet John O'Neil? A. At the corner of Ward's store.

Q. And whether or not you spoke with him? A. I did.

Q. And whether or not you went from that corner to any place? A. I did.

Q. And with any one? A. No, sir.

Q. Well, whether you went alone, or with any one? A. O'Neil and I went together.

Q. Where did you go? A. To the Woodward House.

Q. And what did you do at the Woodward House? A. We had a drink.

Q. What did you drink, and what did John drink? A. I drank seltzer water.

Q. What did he drink? A. He drank whiskey.

Q. And who paid for it, if any one? A. I did.

Q. Did he say anything about the drink which you furnished him at that time? A. He did.

Q. What did he say? A. He said it went good.

Q. If he said anything further, you may state it. A. He said it was the first drink he had that morning.

Q. If he said anything with reference to having money or not having money, you will state it. A. He mentioned he was broke, or something of that kind.

Q. State how he expressed himself. A. He said it was the first drink he had that morning. He said it went damned good. He says, "I was busted," or something like that.

Q. Can you refresh your recollection now by recollecting any testimony at a former trial, former hearing, or in any way, and state whether you can recollect the day of the meeting? A. Well, I thought it was Friday.

Q. Friday morning? A. That is the time I thought it was.

Q. And this was at Woodward's saloon? A. Yes, sir.

Q. Whether or not you saw him again briefly in the evening? A. I passed him by in the evening.

Q. Have any conversation with him in the evening? A. No, sir.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Where were you working that morning? A. At the cutlery.

Q. What time did you go to work that morning? A. I think it was half-past 7.

Q. Where were you the night before that? A. At Woodward's saloon.

Q. What was going on at Woodward's saloon? A. A blow-out there.

Q. A what? A. They were having a good time there, a kind of a free —

Q. Just repeat what you said. A. A free time, a blow-out.

Q. Did you drink anything besides seltzer water Thursday night? A. I didn't see any seltzer water Thursday night.

Q. Did you carry anything away from the Woodward House in a bottle to your home, Thursday night? A. I did.

Q. What was it? A. Whiskey.

Q. Did you drink anything after you got home Thursday night? A. I did not.

Q. Did you drink anything Friday morning before you went to your work? A. I did.

Q. What did you drink? A. Cider.

Q. What else? A. I took a drink of whiskey.

Q. Out of the bottle that you took away with you Thursday night? A. I did.

Q. And what time did you say you went to your work Friday morning? A. I thought it was half-past 7.

Q. Why did you leave your work between 8 and 10? A. Because the foreman told me I had better go home.

Q. Were you intoxicated? A. Slightly.

Q. Didn't the foreman tell you you were drunk? A. He said that they was talking round that I was drunk, and I had better go home.

Q. So it was on your way from the factory that you met O'Neil

on the corner, after the foreman told you you were drunk, and you had better go home, was it? A. It was.

Q. And that was the time when you and O'Neil went from Ward's corner to the Woodward House, and you bought O'Neil a drink? A. It was.

Q. And that was the condition you were in when you remember the conversation that you had with O'Neil, isn't it? A. It is.

GEORGE HEATHCOTE — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. George Heathcote.

Q. Where do you live? A. Shelburne Falls.

Q. What is your age? A. Seventeen.

Q. On which side of the river is your home? A. Buckland side.

Q. Whether or not you were employed in any way on Thursday and Friday, January 7 and 8? A. I was employed Thursday; Friday we didn't work.

Q. Where were you employed on Thursday? A. Working in the cutlery, on a grinding machine.

Q. Do you recollect meeting John O'Neil on that afternoon as you came from the cutlery? A. Yes, sir.

Q. In what place did you meet him? A. Odd Fellows' steps.

Q. Can you state whether that is near to any street corner? A. It was near to Clement Street.

Q. And about what time in the afternoon was it? A. Between half-past 4 and 5.

Q. Whether you were standing up, either of you or both, or sitting down? A. One was standing up, and the other sitting down, I guess.

Q. How were you? A. I think I was standing up.

Q. And O'Neil? A. I don't know for sure; I can't say.

Q. Now, did you have a conversation with him? A. I spoke to him a little.

Q. Did he say anything to you about Mrs. McCloud? A. She passed by.

Q. Now, state all that occurred as Mrs. McCloud passed by. A. She passed by —

Q. Which way was she going? A. Towards Amstein's store. As she passed by, he spoke that he would go up with her some night.

Q. And towards whom did he refer when he said that to you? A. I took it to refer to her.

Q. Did you know Mrs. McCloud yourself by sight? A. Yes, sir.

[No cross-examination.]

WILLIAM O'CONNELL — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. William O'Connell.

Q. What is your age? A. I was born in 1856.

Q. Where do you live? A. I live in Shelburne Falls, Buckland side, when I am at home.

Q. Whether or not you know John O'Neil? A. I do; yes, sir.

Q. Whether or not you saw him on the Thursday night before Mrs. McCloud's death was known? A. Yes, sir.

Q. And where did you meet him first on that day? A. I met him at the corner of Exchange and Clement streets.

Q. Is Exchange Street also known as State Street, or the State road? A. I believe it is; yes, sir.

Q. On which side of the street, the up-hill side, or the river side? A. The up-hill side.

Q. And about what hour of the morning? A. About 9 o'clock, sir.

Q. Whether or not you had a conversation? A. I believe we did.

Q. About how long did you talk together? A. About five or ten minutes.

Q. Whether or not he said anything to you about his wishes, and if so, what you said and what he said; state the conversation that you two had together. A. That Friday morning?

Q. Yes, or Thursday morning, whichever morning it was. Which was the morning you had the talk with him? A. Thursday morning, I believe.

Q. Well, Thursday morning. A. He said he was going to get a piece.

Q. What had been the subject of your conversation during the ten minutes that you had been there? A. I don't remember any, sir.

Q. Well, the general subject of it? A. I am sure I couldn't tell you, because I don't remember what it was, because we didn't talk very long, because I went, — passed along and laughed at him.

Q. Whether or not he said anything else to you on the subject there about his wishes? A. I don't think he did.

Q. Whether or not he stated to you any further about how or where? A. No, sir.

Q. Whether or not during that ten minutes you had been talking about licentious things a little? A. Yes, sir.

Q. Now, whether or not that was the subject of your conversation for the few minutes that you were there?

Mr. PARKHURST. Wait a moment. It seems to me, your Honors,

that the witness should be allowed to state all the conversation he had.

SHELDON, J. Well, you may ask him what was said before this.

Q. Now, Mr. O'Connell, just state in your own way the talk as it began, and what was it about? Tell the jury. A. Why, he said he was going to get a piece; he didn't say where he was going to get it, or anything at all about it; that is all I remember of his saying.

Q. Whether he had talked about that subject before he came to just that expression; whether you had been talking about that a minute or two? A. I don't think we was; no, sir.

Q. Whether there was other talk of the same general kind in the few minutes you were there?

Mr. BEER. We object. The question has been asked over and over; the witness has answered definitely every time.

SHELDON, J. Well, he said there was talk on licentious subjects.

Mr. BEER. And we object to the subject being asked after, unless it relates to this woman. They cannot go into any other matter to show the same trait. We object to going into the character of this defendant.

SHELDON, J. Testimony of what was said is competent. If the witness can testify what O'Neil said there in words or in substance just before that, that is competent.

Q. Did you see him further after this talk on Thursday morning?

A. I think, — I don't remember now whether I did or not.

Q. At any time on Thursday do you think you met him? A. I don't remember, sir.

Q. Whether you saw him on Friday? A. I see him; yes, sir, I did.

Q. And when on Friday? A. At the corner.

Q. At what corner? A. At the corner of Ward's corner, Ward's store.

Q. Whether you talked with him that morning? A. I asked him if he went to the blow-out. He said he did, and he said he had a good time. Then I went from there and went into Amstein's store and staid there for a few moments, and I come out and I see Sammy Leland and John standing there together.

Q. At what place? A. At the corner, sir.

Q. Did you see John O'Neil again on Friday? A. I see him there; yes, sir, I did; I see him standing at the corner.

Q. And after that occasion at the corner, did you see him later in the day? A. No, sir; I did not.

Q. Whether you saw him on Saturday? A. No, sir; I did not.

Q. Whether you were down town on Saturday at all? A. I wasn't down town.

Cross-examination.

Q. (by Mr. DOWLIN). Did you see O'Neil Friday afternoon? A. Sir?

Q. Did you see O'Neil Friday afternoon? A. I met him at noon time; see him at noon time.

Q. Where were you Friday afternoon, Mr. O'Connell? A. Where was I?

Q. Yes, sir. A. I was in numerous places.

Q. Where did you meet O'Neil at noon time? A. He was standing at the corner, him and James Wood and Tim Kennedy.

Q. Were you down street Friday evening? A. Sir?

Q. Were you down town Friday evening? A. I was; yes, sir.

Q. Where did you see O'Neil Friday evening? A. I see him over in the billiard saloon.

Q. Did you go to the post-office Friday evening before you went to the billiard room? A. Sir?

Q. Did you go to the post-office Friday evening before you went to the billiard room? A. Did I go to the post-office before I went to the billiard room?

Q. Yes, Friday evening, when you were down town? A. I believe I went to the post-office.

Q. Was O'Neil in the billiard room when you came in from the post-office? A. I believe he was.

Q. Where was he standing in the billiard room? A. Standing side of the stove.

Q. About what time was that? A. I don't know what time it was; after the mail was changed.

Q. You saw the stage come down with the mail, didn't you? A. No, sir; I did not.

Q. And people coming away from the post-office when you went into the billiard room? A. Sir?

Q. And people coming away from the post-office with their mail when you went in the billiard room? A. There wasn't many people; it was pretty near closing up when I went into the post-office.

Q. How old did you say you were? A. I said I was born in '56.

Q. Where were you born? A. I was born,—it is called Northampton.

Q. How long have you lived in Buckland? A. A good many years.

Q. Are you employed in Buckland? A. Sir?

Q. Are you employed in Buckland? A. I am not now.

Q. How long since you have been employed in Buckland? A. How long?

Q. Yes. A. About a year.

Q. What has been your business for the past five or six years?
A. Following circuses and railroad.

Q. Where were you employed last year? A. I was employed with the Wallace show.

Q. In what section of the country? A. In the west.

Q. In what capacity were you employed? A. Property man.

Q. Where did you go to school? A. Sir?

Q. Where did you go to school? A. I went to school in Buckland and on the Shelburne side.

Q. Shelburne side? Where was the first place you were employed at after you went to school? A. I don't remember, sir.

Q. Where was the next place? A. I don't remember.

Q. What has been the general line of your work since you left school? A. I told you, followed railroad and circuses, too, since — ten years.

Q. For the past ten years you have followed the circuses? A. And railroading, too.

Q. And prior to that, railroading, did I understand? A. I told you railroading; yes.

Q. Have you spent much of your time in Buckland in the past ten years? A. No, I haven't.

Q. If you spent any time there, was it in the winter? A. Winter or summer.

Q. On that Friday afternoon, what time did you leave the street down town to go towards your home? A. I went up towards the depot about 4 o'clock.

Q. Will you just look at the map here a moment, please. Where did you go after you went up towards the depot? A. I came down street again.

Q. At what time did you first go on School Street? A. I don't know what time it was.

Q. Did you call at any place on School Street that afternoon? A. I did; yes.

Q. Where? A. Mrs. Meehan's or Mrs. John Meehan's.

Q. Where was the next place that you called at after leaving Mrs. Meehan's? A. I went to my father's house.

Q. From there where did you go? A. I went to Mr. Schuler's.

Q. And from Mr. Schuler's where did you go? A. I went up to Mrs. Morrissey's.

Q. At what time did you leave Mrs. Morrissey's house? A. I don't know what time it was.

Q. Was it before supper? A. No, sir; it was not.

Q. Did you have supper at Mrs. Morrissey's house that night? A. I did, sir.

Q. What time was that? A. Between 5 and 6.

Q. How long did you stay at Mrs. Morrissey's house? A. It might be half or three-quarters of an hour.

Q. What time was it that you left Mrs. Morrissey's house? A. I don't know what time it was.

Q. Some time between 5 and 6, had your supper, you say? A. Yes, sir.

Q. And you say you stayed there from a half to three-quarters of an hour? A. I did; yes, sir.

Q. Then, was it from 6 to 6.30 that you left Mrs. Morrissey's? A. I told you I didn't know what time it was that I left Morrissey's house.

Q. Can't you remember it? A. No, I cannot.

Q. Was it before 7 o'clock? A. I don't know, sir.

Q. Where did you go from Morrissey's house, — after leaving there? A. I went to Denny O'Brien's house.

Q. By which road did you go to Denny O'Brien's house? A. Why, there is only one way of going.

Q. Over Union Street? A. Yes, sir.

Q. And across the Crittenden road? A. Yes, sir; along that way; yes, sir.

Q. And across that street to the rear of Denny O'Brien's house, that way? A. Yes.

Q. When did you get to Denny O'Brien's house? A. I don't know what time it was when I got in there.

Q. Had you been drinking that day? A. I had.

Q. Can you remember clearly what took place, then? A. Some of the things I can; yes, sir.

Q. Remember having any conversation with Denny O'Brien? A. Yes, sir.

Q. How long did you stay at Denny O'Brien's house? A. I don't know how long I did stay there.

Q. Was it dark when you got there? A. Yes, sir; I believe it was.

Q. Why is it that you cannot remember whether it was light or dark when you got there? A. I told you it was dark.

Q. Was it dark when you left Morrissey's house? A. I believe it was.

Q. Are you sure it was dark? A. Sure; yes.

Q. How did you lose your finger? A. Railroad.

Q. How long ago? A. Four years.

Q. Which hand is it on? A. On the left hand.

Q. How far is it from Morrissey's house to Denny O'Brien's house where you went that night? A. I don't know; never measured it.

Q. How far should you judge, from walking over the distance? A. I don't know how far it is.

Q. Not capable of giving an opinion? A. No.

Q. What time was it Thursday morning you were talking with O'Neil down on the corner there? A. It was about 9 o'clock.

Q. Been drinking any that morning? A. I just come down from the house.

Q. Been drinking any that morning? A. I had just come down from the house.

Q. That doesn't answer the question. You can answer it yes or no A. No.

Q. Did you know or ever have any knowledge of any girl that O'Neil was going round with? A. No.

Q. So, when he said to you that he was going to have a piece, you didn't know to whom it applied? A. No; I did not.

Q. You simply laughed at it? A. Laughed; yes.

Q. You didn't pay attention to it? A. No, sir; didn't pay any attention to it.

Q. O'Connell, do you know a lady, a woman of Shelburne Falls, by the name of Emma Young? A. I heard the name; yes, sir.

Q. Who gave you her name? A. I don't know; I heard the boys speak her name on the street; I don't know who it was, now.

Q. Did you ever hear O'Neil speak of that name? A. I don't know; he might.

Q. Now, think. A. I don't remember, so many have been speaking about her.

Q. That is all.

JAMES WOOD — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. Wood.

Q. Your full name? A. James Wood.

Q. Where do you live? A. Northampton.

Q. What is your business? A. Railroad.

Q. In what capacity? A. Brakeman.

Q. How long have you been so employed? A. Two years or more.

Q. Where did you live before you lived in Northampton? A. Shelburne Falls.

Q. Whether your boyhood was spent in Shelburne Falls? A. Yes, sir.

Q. Whether or not your parents, or one of them, live there? A. Yes, sir; both of them.

Q. In what part of Shelburne Falls do your father and mother live? Which side? A. On the Buckland side.

Q. Which way with reference to the depot? A. Back of the depot.

Q. Is that south? A. Yes, sir; I should say it was.

Q. Where were you on Thursday and Friday, January 7 and 8? A. In Shelburne Falls.

Q. Whether or not you were off duty, on a vacation? A. On a vacation.

Q. When did you first go to Shelburne Falls on your vacation? About how many days before that? A. Three days, I think.

Q. And when you were at Shelburne Falls on your vacation, state whether or not you met John O'Neil, the defendant? A. I did meet John O'Neil.

Q. On what day did you first meet him? A. The first day I was there.

Q. Whether or not you saw him more or less from day to day until Thursday? A. I did.

Q. Whether or not you saw him on Friday also? A. I did.

Q. What did you see him do on Thursday, if anything? A. I don't remember.

Q. Now, can you recollect where you first saw him, what you first saw of him on Friday? A. I did see him on Friday.

Q. And about what hour first? A. I should say it was about noon.

Q. And where? A. On the Shelburne Falls side.

Q. And more particularly where,—be a little more definite. A. I stood with him front of Union hall.

Q. And on what street is that? A. I don't know.

Q. Is it the main street that leads straight from the bridge? A. It is the street that leads straight out from the bridge.

Q. About how far from the bridge? A. I couldn't say how far.

Q. Whether any one else was with you, except you and John O'Neil? A. No, sir.

Q. State how you came to meet at that time. Can you tell from what direction you came, and what direction he came? A. I don't remember.

Q. Do you recollect what was done between you, if anything, at that time? A. We walked to the Shelburne Falls House.

Q. And what, if anything, was done there? A. We walked into the bar room.

Q. What was done, if anything, in the bar room? A. We had a drink.

Q. At whose expense? A. At mine.

Q. Whether there were any others in your company except you two? A. There was not.

Q. Where did you go from the bar room of the Shelburne Falls House with John O'Neil? A. We crossed the street.

Q. To what place? A. To the pool room.

Q. Whose pool room? Was it the one called Haller's pool room? A. Haller's pool room.

Q. Through which side did you go? A. Walked in the front door.

Q. Is that on the street railroad side? A. Yes.

Q. And entered the pool room at about what time? A. It was about 1 o'clock, or after.

Q. What, if anything, did you do in the pool room? A. Sat down in there.

Q. Whether other people were there? A. There were other people there.

Q. Many of them, so far as you knew? A. Two Hallers.

Q. Give their names? A. John; I don't know the other's name.

Q. Whether the other was Adolph or Eddie? A. It was not Adolph, it was Eddie.

Q. How long did you sit in the pool room? A. I couldn't say just how long we did sit there.

Q. As nearly as you can estimate it? A. An hour or more.

Q. Whether anything was done in the way of gaming while you were there? Did either of you play pool? A. No, sir.

Q. After staying there the hour, whether or not you went out together? A. We did.

Q. And where did you go together? A. Across the river to the Buckland side.

Q. To what place? A. To the Woodward House.

Q. Did you go into the Woodward House? A. We did.

Q. And whom did you see in the Woodward House? A. The bar tender.

Q. Was that Leon Woodward? A. I don't remember which one was tending bar.

Q. Was it the young man Woodward? A. I cannot remember now.

Q. What, if anything, did you and O'Neil do in Woodward's bar room? A. We had a drink.

Q. At whose expense? A. At mine.

Q. More than one? A. Yes, sir.

Q. How many? A. I should say two or more.

Q. And about what time did you get there to the Woodward House bar room? A. After 3 o'clock.

Q. And about how long a time did you remain there? A. I couldn't say.

Q. Give your best judgment of the length of time you remained there. A. I should say twenty minutes.

Q. Whether any other people were there whose names you recollect? A. Kennedy.

Q. Timothy Kennedy? A. Yes, sir.

Q. Is that all? A. That is all I remember.

Q. Did Timothy Kennedy go there with you, or did you find him there? A. He went there with me.

Q. With you and O'Neil? A. Yes, sir.

Q. Where did he join you? A. When we crossed the street from going from the Shelburne Falls House.

Q. And whether he was in the pool room also? A. He was in the pool room.

Q. So that he had been with you most of the afternoon? A. Yes, sir.

Q. Then three of you were in company? A. Yes, sir.

Q. At the Woodward House, have you stated all the drinks that were had by you three? A. Yes, sir.

Q. You said three or more. What do you say about whether it was more? A. I say two or more.

Q. Two or more. What do you say about whether it might have been more or was more? A. I don't remember.

Q. Did you three leave the house together? A. We did.

Q. And about what time? A. After 3 o'clock.

Q. And went where? A. Down on the street.

Q. To what point? A. In front of the clothing store.

Q. On what street? A. I don't know what street.

Q. Whether it was the street parallel with the river? A. Yes, sir.

Q. The street you reach after turning Ward's corner? A. Yes, sir.

Q. What did you do there, if anything? A. We sat there.

Q. For how long? A. Most 5 o'clock.

Q. After leaving that point, whether you three went together, or separated? A. We went together.

Q. To what place? A. To the Woodward House.

Q. And whether any others were with you in this 5 o'clock visit to the Woodward House? A. There was.

Q. Who? A. Mr. Kennedy.

Q. What is his first name? A. Tim.

Q. Others beside you three? A. Mr. Fenton.

Q. Reuben Fenton? A. I don't know his first name.

Q. Whether or not he was a cousin of Kennedy's? A. I don't know; they say he was.

Q. Four of you went into the Woodward House at 5 o'clock? A. Yes, sir.

Q. What was done when you were in there? A. We had a drink.

Q. At whose expense? A. Kennedy's.

Q. Do you recollect what was taken? A. I couldn't say.

Q. Did Reuben Fenton take anything intoxicating? A. He did not.

Q. What did he take? A. He took soda.

Q. Were there any other drinks following? A. There were.

Q. At whose expense was the next one? A. Mine.

Q. Any others following? How many in all at the 5 o'clock visit?
A. Three, as near as I can remember.

Q. About how long did you remain there at the 5 o'clock visit?
A. I can't remember.

Q. State your best judgment of the length of time, that is all. A. I should say an hour.

Q. And when you left the Woodward House, whether the others left with you? A. I can't remember.

Q. So far as you can recollect, whether you and O'Neil left together?
A. I don't remember whether we did or not.

Q. What, if anything, did you see O'Neil do at the end of your visit to the Woodward House? Can you tell where he went? A. I cannot.

Q. Can you tell when he went out? A. I cannot.

Q. Did you go out first? A. I don't remember.

Q. So far as you can state, where did you next go? A. To the Shelburne Falls side of the river.

Q. Whether any of the party went with you? A. They did not.

Q. Did you meet John O'Neil again that evening? A. I did.

Q. At what hour, as near as you can state? A. Twenty-five minutes past 8.

Q. And where? A. At the door of the Woodward House.

Q. Whether any persons were present besides you and John O'Neil? A. I didn't see any.

Q. Where had you been previous to that time, yourself? A. To the livery stable.

Q. Whose livery stable? A. In the office, Mr. —

Q. Frost's? A. Frost.

Q. Now, at this time, state what you saw of John O'Neil at the Woodward House at twenty-five minutes past 8, as you say. State where you first noticed him. A. At the door, when I was coming out.

Q. Whether you said anything, either of you? A. He asked me where I was going.

Q. State fully, now, all the conversation. A. I told him I was going over the river.

Q. Now, give us all that he said and you said; go on and give it all. A. He walked along with me.

Q. Well, before going away, whether you saw what he did at the Woodward House yourself? A. I did not.

Q. You say he walked away from the Woodward House with you? A. He did.

Q. And went in what direction? A. Over the river.

Q. Well, first from the Woodward House, what direction did you take? A. Towards the bridge.

Q. That is, Clement Street first? A. I don't know the name of the street.

Q. Whether you went down the street and turned the corner towards the bridge? A. I did.

Q. Which door did you go out of, the north door or the east door, of the Woodward House? A. The bar room door, at the end of the Woodward House, towards the barn.

Q. And that is the door that leads out into the yard, is it? A. It is.

Q. And that is the door that leads out towards the east? A. It is.

Q. Towards the south. And is that towards the stable? A. It is.

Q. And then how did you go out of the yard towards the street, by what course? Did you go down towards Ashfield Street, or go to the north towards Clement Street?

Mr. PARKHURST. You are leading him right along.

Q. Well, will you state in what direction you went? A. Towards the bridge.

Q. By what route? A. Turned the corner by the Odd Fellows' block

Q. Yes; any other person except you and O'Neil together? A. No, sir.

Q. Go on and state where you went? A. I went to the middle of the bridge.

Q. Then what occurred? A. I met a young lady on the bridge.

Q. State her name. Was it Miss Tousseul? A. Miss Tousseul.

Q. Whether or not you went any further with Mr. O'Neil? A. I did not.

Q. Did you see in what direction O'Neil went? A. I did not.

Q. And where did you yourself go? A. To the hotel.

Q. And where did you spend the evening? A. With Miss Tousseul.

Q. At which hotel? A. Shelburne Falls House.

Q. And where? A. In the dining room.

Q. And to what hour did you remain in the hotel? A. Ten minutes to 11.

Q. And when you left the hotel, whom did you see, if any one? A. On my way from the hotel I met O'Neil.

Q. At what place? A. Front of the Shelburne Falls bank.

Q. State all that transpired there, naming first the persons that were there. A. Morrissey.

Q. Give his full name? A. William.

Q. William P. Morrissey. Go on. A. Woodward.

Q. What is his name? A. Dubsey.

Q. That is his nickname? A. I don't know.

Q. Is his name Charles Woodward? A. I couldn't say.

Q. Any others? A. O'Neil, Woodward and Morrissey.

Q. And yourself? A. And myself.

Q. And you were at what place? A. Front of the Shelburne Falls bank.

Q. Whether you had any conversation when you four were there together at the Shelburne Falls bank; and, if so, state fully. A. We did.

Q. Now, tell all about it to the gentlemen of the jury. A. They asked me to get them liquor.

Q. Just what was said, and who said it? A. O'Neil says, "Get me a quart." I says, "I can't."

Q. Now, you go on and tell all that was said there, and tell it in the exact words that were said there. A. He says, "Get me a quart."

Q. Go on. A. I says, "I won't." He says, "Go ahead; we have got the stuff." I says, "I don't care; I won't get you no liquor." He handed me a bill. He says, "Go ahead and get us a quart." I took the bill and looked at it. I see it was a ten-dollar bill. I says, "Where the hell did you get the money?" Dubsey Woodward says, "That is mine," and I handed it back.

Q. Go on. A. Just then an officer come along. I started for home. They walked along with me as far as the depot.

Q. Before leaving that place, whether you did anything with that bill which you have not mentioned, which you have forgotten,—if you think you did anything with that bill that you have not mentioned, if so, state it all. A. I took it and looked at it, turned it over and handed it back.

Q. What opportunity had you at that point of looking at it? A. There was a light shone from one of the windows; I think it was the bank window.

Q. Now, did you do anything with reference to going toward the hotel? A. I did.

Q. State all about that. A. I started towards the hotel ; I turned around and come back.

Q. And how far did you go when you started toward the hotel? A. As far as the door.

Q. Yes. Did you meet anybody there? A. Not that I remember.

Q. No. Going as far as the door of the hotel, was there anything occurred which showed you what time it was? A. The bar room was closed ; it must have been after 11 o'clock.

Q. Whether or not you returned to the bank steps? A. I did.

Q. Now, state the motions of you four, if you went away. A. We walked off together.

Q. State how you walked, whether two and two. A. Morrissey walked with me.

Q. And who with O'Neil? A. Woodward.

Q. And who in front? A. I don't remember anybody.

Q. Well, which two went first? Which two went first, and which two followed? A. O'Neil and Woodward.

Q. And where did they lead, and where did the other two follow? A. To the depot.

Q. Now, state what occurred when you got to the depot. A. They went in the depot.

Q. Well, what, if anything, did you do, or what was said to you in O'Neil's presence? A. Nothing said to me in his presence.

Q. Did you go in yourself? A. I think I did ; I won't be sure.

Q. Was there any liquor drunk there by any of the men that were there? A. Not that I know of.

Q. Refresh your recollection, and see whether one of the parties did not produce a pint and ask you to drink? A. One of them asked me to drink, but I didn't see the pint.

Q. And where were you when one of the parties asked you to drink? And where were the others? A. In the depot.

Q. State what O'Neil was doing, as far as you saw? A. I didn't see him do anything.

Q. Did you see in what place O'Neil was? A. I did not.

Q. Did you observe his position in the depot? A. I did not.

Q. Were you in there at any time when he showed any money? A. I was not.

Q. Where did you go? A. To the engine house.

Q. How long did you remain in the engine house? A. I don't remember.

Q. Whether the others came? A. They did.

Q. How long were you there after the others came to the engine house? A. I walked right out.

Q. And went where? A. Home.

Q. When on the next day did you first leave your father's house?

A. About noon.

Q. Did you see John O'Neil at all that day? A. I did not.

Q. Did you see him after that up to the time of his arrest? A. I did not.

Q. During all the time you were with John O'Neil, did he produce any money at all prior to the time — [objected to] on Friday evening, on Friday evening when you met O'Neil at the bank steps? [Objected to.]

SHELDON, J. Unless it is money that came from the deceased, it won't be material, of course.

Mr. KNOWLTON. I would say, may it please your Honors, we expected that answer, and are endeavoring to prove that he had no money at that time.

SHELDON, J. Oh, it was Friday evening.

Mr. KNOWLTON. Yes; we don't want to have any misunderstanding.

SHELDON, J. Well, that is competent, and you can have the exception saved.

THE WITNESS. He did not.

Mr. BEER. We would like to have the objection reach to all testimony relating to the possession of the money by the defendant.

MASON, C. J. It could not be taken quite as broadly as that.

Cross-examination.

Q. (by Mr. DOWLIN). Where do you live now? A. Northampton.

Q. How long since you have lived in Buckland? A. I can't remember; I think it was two years ago.

Q. Where are you working now? A. On the Boston & Maine Railroad.

Q. How long had you been in Buckland prior to this Friday of which my brother Hammond has inquired of you? A. Three days, I think; I am not sure.

Q. Can't you remember just how long you had been there? A. No, sir; I can't.

FOURTH DAY.

JULY 22, 1897.

The court came in at 9 o'clock, the roll of the jury was called, and the prisoner answered to his name.

Cross-examination of JAMES WOOD — resumed.

Q. (by Mr. DOWLIN). Where did you come from that time that you went to Shelburne Falls? A. To my home.

Q. You don't understand my question. From what city did you come the time that you went to Shelburne Falls in January last? A. From Northampton.

Q. What was your object in leaving Northampton? A. To see my people.

Q. Vacation? A. Yes, sir.

Q. How long a vacation were you going to take when you left Northampton? A. Week.

Q. Did you finish your week's vacation at Shelburne? A. I did.

Q. How many days did you stay in Shelburne after the Friday night that you have described? A. Three days.

Q. Then up to Friday night you had been there about four days? A. I can't remember.

Q. You said you finished your vacation there, didn't you? A. I did.

Q. And you stayed there three days afterwards? A. I did.

Q. That would leave four days out of the week, wouldn't it? A. It would.

Q. Well, now, in that four days how many times did you see Jack O'Neil, in the first four days of your vacation? A. I don't remember.

Q. Did you see him the first day you came to Shelburne? A. I did.

Q. Drink with him that day? A. I did.

Q. How long have you known Jack O'Neil? A. Since I was nine years old.

Q. Did you ever work on the railroad together? A. We did.

Q. Now, at these different times that you have described to the district attorney, as on Friday, Jack O'Neil drinking with you, and whenever you paid for it, the drinks were always taken at your invitation, weren't they? A. They were not.

Q. Who invited Jack O'Neil to drink and you to pay for it? A. Nobody invited Jack O'Neil to drink and me to pay for it.

Q. When you paid for the drinks, didn't you invite O'Neil to drink?

A. I did.

Q. Now, prior to this Friday night that you have described, to what extent were you and O'Neil together during the days of your vacation there at Shelburne? A. I can't remember.

Q. Did you see him each day? A. I don't remember.

Q. You saw him the first day that you were there, and drank with him, you say? A. I did.

Q. Do you remember seeing him the second day? A. I do not.

Q. Do you remember seeing him the third day? A. I don't remember what day in the week the third day was.

Q. Do you remember a "blow-out," so called, at Woodward's hotel Thursday night? A. I do.

Q. Do you remember seeing O'Neil? A. I do not.

Q. Do you remember that you didn't see him while you were there on your vacation prior to this Friday night? A. I didn't see him Saturday.

Q. Oh, I said prior to this Friday night, before this Friday night that you have described. A. I don't remember.

Q. Do you remember this Friday night that you have described at the time when you were in Woodward's bar room after supper, of seeing William O'Connor come into the bar room? A. I do not.

Q. How long were you in the bar room after supper before you saw Jack O'Neil come in there Friday night? A. I didn't see Jack O'Neil come in there after supper.

Q. In relation to the bar room, where did you see him Friday night? A. At the door, when I was coming out.

Q. So, then, you don't know whether you saw him in the bar room or not after supper Friday night? A. I do not.

Q. With whom were you in the bar room Friday night? A. Tim Kennedy.

Q. Who else? A. That was all.

Q. Where did you first say that you met O'Neil Friday afternoon? A. As near as I can remember, in front of the Shelburne Falls House.

Q. At what time? A. About 12 o'clock.

Q. Where did you go then? A. To the Shelburne Falls House.

Q. How many times did you drink there? A. I don't remember.

Q. Three times? A. No, sir.

Q. Whom did you meet there? A. The bar tender.

Q. Who else? A. Nobody.

Q. Where did you go from the Shelburne Falls House? A. Across the street to the pool room.

Q. Whom did you meet there? A. Mr. Kennedy.

Q. Who else? A. Mr. Monahan.

Q. How long did you stay in the pool room? A. I don't remember.

Q. And then where did you and O'Neil and Kennedy go from the pool room? A. To the Woodward House.

Q. And did you three stay in the Woodward House all the time up to supper time from the time you left the pool room? A. We did not.

Q. How long did you stay there when you went there first? A. I would say twenty minutes.

Q. How many drinks did you have there? A. Two.

Q. How long were you away from the Woodward House before you came back again? A. An hour.

Q. And how long did you stay there that time? A. After 5 o'clock.

Q. Did you come back again before 6 o'clock? A. We did not.

Q. Did you leave the Woodward House before 6 o'clock? A. It was about 6 o'clock.

Q. Whom did you leave the Woodward House with about 6 o'clock? A. I left it alone, as near as I can remember.

Q. Didn't you leave it with Kennedy and O'Neil? A. I am not certain.

Q. Didn't you and Kennedy come out of the Woodward House and pass along the east side of it to Clement Street, and stop on Clement Street and talk there? A. I met a gentleman there; I cannot say whether they were with me, or not.

Q. Who was the gentleman? A. Mr. O'Brien.

Q. What is his first name? A. They call him Denny.

Q. Dennis O'Brien. And you were with O'Neil and Kennedy when you met Dennis O'Brien, weren't you? A. I don't remember.

Q. Had you been drinking so much that you couldn't remember? A. No, sir.

Q. Do you remember making any remark to Dennis O'Brien about O'Neil as you stood out there on Clement Street? A. I do not.

Q. Do you remember that you did not? A. I do not.

Q. Where did you go after you left Dennis O'Brien on Clement Street? A. I crossed the river.

Q. Went down around Ward's corner? A. I did.

Q. And wasn't it just after 6 o'clock that you left Dennis O'Brien on Clement Street? A. I can't fix the exact time; I think it was 6 o'clock.

Q. Did you see any people going home from the cutlery works that you know worked in the cutlery works? A. I did not pay any attention.

Q. Was Ward's store open when you went by? A. I did not notice.

Q. Did you meet Mrs. McCloud when you went down around Ward's corner? A. I don't know Mrs. McCloud.

Q. You had never seen her? A. I have seen her a long time ago, but I don't know whether I know her.

Q. Did you meet any lady when you turned Ward's corner? A. Not that I remember.

Q. Do you remember whom you did meet between Ward's corner and the bridge? A. I met no one that I was acquainted with.

Q. Now, do you remember whether O'Neil left your party first, or whether you left it first? A. I do not.

Q. And do you remember seeing what direction O'Neil went? A. I do not.

Q. You said that you didn't remember whether or not you made any remark to Dennis O'Brien about Jack O'Neil when you stood by the bank there? A. I don't remember.

Q. Do you remember saying to Dennis O'Brien, in answer to a question from him, "Yes, O'Neil is pretty full, and I propose to keep him so as long as I stay here"? A. I don't remember.

Q. Will you swear you didn't make it? A. I will not.

Q. Where did you go after you crossed the bridge after leaving your party at the Woodward House? A. To the Shelburne Falls House.

Q. What did you do there? A. I walked into the Shelburne Falls House.

Q. Well, did you go into the bar room? A. I think I did.

Q. Well, where did you go from the bar room? A. To see a friend of mine in the livery stable office.

Q. How long did you stay in the office? A. It was about 7 o'clock.

Q. How soon after 7 o'clock was it that you went back to the Woodward House? A. I walked right back up that way.

Q. And did you notice from soon after 7 o'clock until the time you met O'Neil any one in the bar room at the Woodward House besides Kennedy? A. I don't remember who was in there besides Kennedy.

Q. What time was it that you met Miss Tousseul on the bridge with O'Neil? A. Eight-thirty.

Q. And the first time after that that you saw O'Neil again was in front of the bank steps, was it? A. It was.

Q. And when he exhibited to you the ten-dollar bill, by reason of what you heard there, whose ten-dollar bill did you think it was?

Mr. KNOWLTON. I pray your Honors' judgment.

SHeldon, J. I do not see how that is competent.

Mr. DOWLIN. I will withdraw it.

Q. And when the ten-dollar bill was handed to you, I understand you, you heard Dubsey Woodward exclaim, "That is mine"? A. He did.

Q. How do you know that it was just 8.30 when you met Miss Tousseul on the bridge with O'Neil, — of your own knowledge? A. By a clock at the end of the Woodward House bar.

Q. When you met O'Neil at the door of the bar room, just before you left, did you notice anything unusual about his manner? A. I did not.

Q. Was he excited?

Mr. DOWLIN. I withdraw the last question.

Q. And after you left O'Neil at the depot, did you see him again during your stay in Shelburne Falls? A. At the engine house before I went home.

Q. After you left him there, did you see him again? A. I did not.

Re-direct Examination.

Q. (by Mr. HAMMOND). Mr. Wood, at the time you saw O'Neil, in the Woodward House at the door, after 8 o'clock, how long had you been in that bar room yourself? A. About an hour.

Q. With reference to the time when you and O'Neil met Miss Tousseul on the bridge, can you state as to any appointment you had for that? A. I was to meet her at 8.20.

Q. And whether in fact you observed the time that you actually did meet her? What time did you start from the Woodward House? A. Twenty-five minutes past 8.

Q. How did you observe the time, if at all? A. By the distance.

Q. The time of your starting? A. By the clock at the end of the Woodward House bar.

Q. Whether you saw it? A. I saw it.

Re-cross-examination.

Q. (by Mr. DOWLIN). Then you didn't reach the Woodward House until after 7.25 after supper? A. I fix no exact time.

Q. And you don't know how long you were in there? A. Not to a minute.

Q. Do you to a quarter of an hour? A. No, sir.

Q. Do you to half an hour? A. Yes, sir.

Q. How is it that you can remember so clearly what occurred after supper, and you cannot remember what occurred before supper? A. I can't tell you that reason.

REUBEN FENTON — *sworn*.

- Q. (by Mr. HAMMOND). What is your name? A. Reuben Fenton.
- Q. Your age? A. Nineteen.
- Q. Where do you live? A. In Leeds.
- Q. In what city? A. Northampton.
- Q. Whether or not you were in Shelburne Falls on Friday, January 8, last? A. I was.
- Q. With whom were you? A. Tim Kennedy.
- Q. Whether or not he is a kinsman of yours? A. First cousin.
- Q. While there, whether or not you saw John O'Neil? A. Yes, sir.
- Q. And when first? A. About half-past 4 Friday afternoon.
- Q. And whether in company with any one else? A. With James Wood and Tim Kennedy.
- Q. And where? A. At Odd Fellows' corner.
- Q. Then state what was being done there. A. Talking there.
- Q. For how long a time did they remain there? A. About half an hour.
- Q. Then what? A. Went up to the Woodward House.
- Q. About what time did they go to the Woodward House? A. About 5 o'clock.
- Q. Name the persons that went to the Woodward House at 5 o'clock. A. Tim Kennedy, Jimmie Wood, Jack O'Neil and myself.
- Q. Whether any other persons were in the bar room when you went in? A. I don't know who was in there; there were others in there, though.
- Q. What, if anything, was done when you first got into that room? A. No, sir.
- Q. Whether there was any drinking or treating? A. There was.
- Q. By whom? A. Jimmie Wood and Tim Kennedy.
- Q. How many times was there treating? A. Three.
- Q. And who paid for the treats? A. Jimmie and Tim.
- Q. Whether you saw John O'Neil spend or have any money while you were with him? A. No, sir.
- Q. How long a time did you remain there at the Woodward House? A. Left there about a quarter of 6.
- Q. Which way did you go when you left at a quarter of 6? A. Went down by Ward's corner and went home.
- Q. Whether or not any one went with you? A. Tim Kennedy.
- Q. Whether you observed which way John O'Neil went? A. No, sir; we left him standing there with Jimmie Wood.
- Q. At what place? A. Ward's corner.
- Q. At about what time? A. About ten minutes of 6.

Q. Whether you saw John O'Neil after that at all? A. I saw him —

Q. While you were in Shelburne Falls? A. In the pool room about 9 o'clock.

Q. That same evening? A. Yes, sir.

Q. When first did you go into the pool room? A. Oh, it must have been around 9 o'clock some time.

Q. Whether O'Neil was in the pool room when you went there, or whether you were there first? A. I think I was there first.

Q. What first did you see of John O'Neil at the pool-room? A. I didn't notice him till after he was in there.

Q. When he was in there, what did you see him doing or saying, if anything? A. I didn't take any notice.

Cross-examination.

Q. (by Mr. DOWLIN). How long had you been in Shelburne? A. From Thursday morning to Saturday evening.

Q. Was that the first time you had seen O'Neil and Wood and Kennedy together? A. Yes, sir.

Q. Did you ever live in Shelburne Falls? A. No, sir.

Q. Did you ever meet O'Neil before? A. No, sir.

Q. How long did you say that you were together Friday afternoon? A. From about half-past 4 to about ten minutes of 6.

Q. When you left Wood and O'Neil together, will you turn round to the map, and show just where they were standing? A. Right here [showing].

Q. On the State road or on Clement Street? A. Right on the corner.

Q. That was about ten minutes of 6? A. Yes, sir.

Q. Are you sure it was not earlier? A. No, sir.

Q. Sure it was not later? A. No, sir.

Q. It might have been 6, mightn't it? A. No, because we got to the house just at 6 o'clock.

Q. Now, will you point out on that map which way you went from Ward's corner to go to the house? A. We went this way [showing], north, along the State road.

Q. How long did it take you to walk? A. It must have been eight or ten minutes, because I walked along with Tim, and he couldn't walk fast.

Q. Take you eight or ten minutes to walk to Kennedy's house? A. It must have.

Q. Kennedy's house is located on the State road, isn't it? A. Yes, sir.

Q. The State road just above that street that runs by the Methodist church? A. Yes, sir.

Q. How many houses is it above this corner, do you remember, there? A. I don't remember.

Q. Do you remember seeing O'Neil again between the time that you went home and 9 o'clock that evening? A. I remember seeing him around 9 o'clock; I don't know just what time it was. I saw him in the pool room.

Q. Did you notice anything unusual about him in the pool room? A. No, not a great deal.

Q. Did you see Wood again that evening? A. Not as I remember of.

Q. Did you see where Wood and O'Neil went from Ward's corner? A. No, sir; they were standing there when we left.

Q. You didn't look back? A. No.

Q. Didn't notice whether they separated or not? A. No, sir.

Q. Did you notice whether anybody else came and joined them there? A. There was some other man with them, joined them just as we left.

Q. Some other man joined them just as you left. Do you know who it was? A. No, sir.

Q. How many times did you see O'Neil and Wood and Kennedy drink there in the Woodward House? A. I don't remember.

Q. Were Wood and O'Neil intoxicated when you left them? A. Well, not a great deal.

Q. Well, were they intoxicated to such a degree that you noticed it? A. Yes.

Q. Could O'Neil walk straight? A. Yes, sir.

Q. Could Wood? A. Yes, sir.

Q. You didn't notice them stagger? A. No, sir.

Q. Been drinking any yourself? A. No, sir; I drank soda; I didn't drink anything else.

Q. Well, what drew your attention to the fact that they were intoxicated? A. Well, by the looks of them more than anything else.

DENNIS O'BRIEN — *sworn*.

Q. (by Mr. HAMMOND). Your name? A. Dennis O'Brien.

Q. You live in Shelburne Falls? A. In Buckland; yes, sir; Shelburne Falls.

Q. Buckland side? A. Yes, sir.

Q. Were you engaged in any work Friday, January 8? A. Yes, sir.

Q. What? A. On the electric railroad.

Q. What time did you get through? A. A little before 6 o'clock; about half-past 5, I should think.

Q. After getting through with your work, whether or not you saw the defendant, John O'Neil? A. Yes, sir; I met him when I was going home.

Q. Where? A. On the Buckland side, between Ward's corner and the Woodward House.

Q. Whether there was any other person there? A. Yes, sir; there was; Tim Kennedy and Jim Wood, and another gentleman I didn't know.

Q. About what time did you meet them first? A. Well, it was a few minutes before 6.

Q. Whether the man who just went out back into the room before you came in was the other man? A. I don't know, sir; I didn't know him; I have heard since it was him. [Objected to.]

SHELDON, J. No.

Q. (by Mr. HAMMOND). What occurred as you met there? A. Well, I stopped and talked. The other two gentlemen went along, — Mr. Kennedy and the other man, whoever he was, — and Mr. O'Neil and Mr. Wood and I stood there talking.

Q. About how long? A. I should think we stood there as much as twenty minutes.

Q. When you separated? A. I went home, sir.

Q. State in which direction each of you went. A. I think Mr. O'Neil stood there until ten minutes or a quarter-past 6, and he started down hill towards the corner, to go home around by the railroad track; and as he started along down he staggered, and I says to Wood —

Q. No matter what you said, — what you observed. In what direction did you say O'Neil went? A. Started down the hill towards the corner. Saw him go by the stone wall, up towards the railroad track; seemed to be going home towards the crossing.

Cross-examination.

Q. (by Mr. BEER). How long have you known James Wood? A. Well, I guess I have known him about fifteen years.

Q. Had you met him for a long time until that evening? A. No, sir; I had not for more than a year or so, I guess.

Q. Whereabouts — pointing on this map, as near as you can — was it that you met him? You may take my pencil and point out. A. Let's see where Ward's corner is.

Q. There is Ward's corner [indicating]. A. That is the street going up the hill [indicating]?

Q. Yes. A. I met him between the barn there at Ward's corner, and the corner, — between Ward's barn and the corner of the Odd Fellows' building. As you come out of the Woodward House, there

is a barn on the left. I met him between that barn and the corner of the Odd Fellows' hall, right on the sidewalk.

Q. After meeting them there, did you go down the hill any? A. No, sir; I did not; I went home.

Q. Did you stay just where you met them to talk with them? A. Yes, sir; stood right there.

Q. Which of the two left first? A. Mr. O'Neil left first.

Q. How long before Wood left after O'Neil? A. Well, two or three minutes, probably.

Q. How long? A. Two or three minutes. He said he was going to supper, and he said, "I will see you after supper, Jim."

Q. What was said just before he said "I am going to supper?" A. Well, I don't know exactly what was said; he said he was going to supper.

Q. Was any question asked Wood where he was going? A. I think Wood said he was going over the river; I think that is what he said; I won't be sure, but I think he said so.

Q. Did you hear O'Neil ask him any questions? A. Well, I think he says, "Where will you be after supper?" And Jim said, "I am going over the river," or something like that. Of course I didn't pay any attention.

Q. What did O'Neil say after that? A. He said, "I will meet you after supper."

Q. Did you notice anything peculiar about O'Neil as he turned away? A. I noticed him stagger, and I said —

Mr. KNOWLTON. Wait a minute.

SHELDON, J. You may leave that out.

Mr. BEER. We desire to bring that out, to show — it is claimed by the government that O'Neil was not paying for any drinks.

SHELDON, J. You may show that, but anything the witness said to Wood is not competent.

Q. What did you hear Wood say about —

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. If it is anything that tends to contradict Wood, it may be competent.

Mr. KNOWLTON. My brother asked the witness Wood if he did not say that. I did not see how I could object to it on cross-examination, but it seems to me it is immaterial to prove it collaterally by anybody else.

SHELDON, J. Of what consequence is it?

Mr. BEER. It tends to show that O'Neil was the guest of Wood at all those times when they drank together.

SHELDON, J. Well, that is the contention of the government, — that O'Neil was the guest of Wood.

Mr. BEER. That he was the invited guest?

SHELDON, J. Well, if he was, of what materiality is that on this issue? If you intend to show that O'Neil had money, you may show that, of course.

Mr. BEER. It has a tendency to show that, — it doesn't show that O'Neil had not money because he did not pay for the drinks.

SHELDON, J. That may be, but neither does it tend to show that O'Neil had money. Why is not this competent, Mr. Knowlton, as one of the circumstances to explain the fact why Wood and the people who were there did not see money in O'Neil's possession, and as explaining the testimony of Wood that he did not observe money in his possession?

Mr. KNOWLTON. Did not see money?

SHELDON, J. Yes.

Mr. KNOWLTON. Now, how does that —

SHELDON, J. If he said at the time, or immediately after the time, if he said that he himself voluntarily had been supplying O'Neil with drinks, that might itself explain why O'Neil had not produced money.

Mr. KNOWLTON. I don't quite see it; however, I shan't make any objection.

SHELDON, J. You may put the question.

Q. What did you say to Wood, and what did he say to you in respect to O'Neil, as O'Neil was leaving, or soon after? A. I says to Wood that O'Neil is feeling —

Q. (by SHELDON, J.). What did O'Neil say to him? A. Well, he said what I said to Wood, and what Wood said to me.

Q. The question is, what did Wood say to you. A. He says, "Jack has been that way since I came, and I am going to keep him that way till I go back."

Q. (by Mr. BEER). What way?

Mr. KNOWLTON. Well, —

SHELDON, J. That may well be competent to explain the meaning of what was said to Wood just before Wood said that. You may ask that if you desire, — what had been said before.

Q. What had been said before that? A. I says to him, "He is feeling pretty well." That is, I meant he had considerable drink in. He said, "Yes, he has been that way since I came, and I am going to keep him that way till I go back."

Q. Now, did you see which way O'Neil went after that? A. Yes, sir; he turned to the right, and went right up towards the railroad crossing.

Q. And while you were talking with Wood about that subject, did you keep your eye on O'Neil? A. I stood there watching him after he staggered, yes, sir, till he went out of my sight.

Q. How far up did you watch him? A. I watched him clear up to that stone wall, there, as you are going up towards the railroad crossing.

Q. We are not familiar with the objects there. You have spoken of the Woodward House. Do you remember a lawn east of the Woodward House? A. Yes, sir; right down front of it.

Q. Yes; do you remember any object — A. There is a stone wall right along down there; he went up by that stone wall on the sidewalk out of my sight.

Q. How far, in your judgment, was it that you saw him after his leaving you? A. Well, I should think it was up till he struck in through the stone wall there, up by where that road is that goes up by the Woodward House; I think it was somewhere along in there.

LEON P. WOODWARD — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Leon P. Woodward.

Q. Where was your residence and what was your business in January last? A. Shelburne Falls, Mass., clerk at the Woodward House.

Q. By whom was the Woodward House kept? A. P. R. Woodward.

Q. What is his full name? A. Philip R. Woodward.

Q. Your father? A. Yes, sir.

Q. Do you know the defendant, John O'Neil? A. Yes, sir.

Q. Whether or not he was in your house on Friday, January 8? A. He was.

Q. At what time first, do you recollect? A. I should say it was about half-past 10 in the morning.

Q. With whom, at that time, if any one? A. Sam Leland.

Q. State what occurred. A. Well, they had a drink, O'Neil and Leland; O'Neil had a drink of whiskey and Leland a drink of seltzer.

Q. And who paid? A. Leland.

Q. Any remark that you recollect at that time? A. I recollect of telling Leland that he had had enough.

Q. I mean any remark of Mr. O'Neil? A. No, sir.

Q. Was the defendant in your house again on that day? A. Yes, sir.

Q. At what time? A. In the neighborhood of 3 o'clock, I think, in the afternoon.

Q. Whether any one was with him? A. Yes, sir.

Q. Who? A. Kennedy and Wood, — Tim Kennedy and Jimmy Wood.

Q. What occurred at that time? A. They had drinks.

Q. About how many? A. Two or three, possibly four, apiece.

Q. Who paid, if any one? A. Kennedy and Wood.

Q. Did O'Neil pay anything at that time? A. No, sir.

Q. Any remark made by O'Neil at that time? A. I don't recollect of any.

Q. About how long did they remain at that time? A. I should say half an hour, possibly longer.

Q. Was he in your house again on that day? A. Yes, sir.

Q. What time? A. About 5 o'clock.

Q. With whom? A. Kennedy and Wood and a young man by the name of Fenton, I think.

Q. What occurred at that visit? A. They had more drinks.

Q. Who paid? A. Kennedy and Wood, I believe.

Q. During the visits John O'Neil made there up to that time, whether you saw him spend or have any money? A. No, sir.

Q. Whether or not he made any remark about that? A. He made the remark that he was on the hog, I believe.

Q. Won't you state fully all that he said? A. He says, "I am on the hog." He says, "When I have the price I blow myself, don't I, Tim?" referring to Kennedy.

Q. About how long did they remain there at that time? A. From 5 o'clock till about a quarter of 6.

Q. Did you see the defendant again after a quarter of 6 on that day? A. Yes, sir; saw him between quarter and half past 8.

Q. Where did you see him? A. In the bar room.

Q. Do you recollect which door he came in? A. He came in through the door from the hall, I believe.

Q. Whether O'Neil came there alone, so far as you observed? A. Yes, sir.

Q. In what way did he take what he bought? A. In a pint bottle.

Q. Did you observe whether or not he took it away with him? A. He put it in his pocket, I think.

Q. About what time was this? A. Between quarter and half past 8.

Q. Did you observe whether he went away alone, or in company?
A. I think he went out very near the same time that Jimmie Wood did.

Cross-examination.

Q. (by Mr. DOWLIN). How long have you lived in the town of Buckland? A. Most of my life.

Q. How long did O'Neil and Wood and Kennedy stay in your place the first time they went in there Friday afternoon? A. I should say half an hour or more.

Q. You were tending the bar then, were you? A. Yes.

Q. And you were tending bar when they went out the last time?
A. Yes, sir.

Q. Before supper? A. Yes, sir.

Q. You were tending bar when you say you first saw O'Neil come in again after 8 o'clock? A. Yes, sir.

Q. Who was tending bar between the time that they went out the last time, and the time you saw them come in at 8 o'clock? A. I was tending bar most of the time. My father was there perhaps half an hour while I was at supper.

Q. Any one else sell any liquors there besides you and your father? A. Not that I know of.

Q. Have you got any other men employed around the premises there, or did you have at that time? A. Yes, sir.

Q. What was his duty? A. He worked in the barn.

Q. Did he ever sell any liquor in the bar room? A. Sometimes.

Q. He had a right to go there and get liquor and sell it? A. Yes.

Q. Do you know whether he sold any liquor that day, or not? A. No, sir.

Q. Do you know whether he was on duty in that bar room between the hours that you have mentioned, the last time Friday afternoon and the first time that you saw O'Neil after 8 o'clock that night? A. No, sir; I couldn't tell you. He might have been there while I was at supper; I don't think he was.

Q. Then you, of your own knowledge, can't swear that the next time O'Neil was in your bar room was at 8.15 after he left before 6 o'clock? A. He might have been there while I was at supper.

Q. You say that you heard O'Neil say something about being "On the hog; when I have the price I blow myself, don't I, Tim?" Are you sure of that? A. Yes, sir.

Q. Pretty well acquainted with Kennedy, are you? A. Yes, sir.

Q. And O'Neil? A. Yes, sir.

Q. And Wood? A. Yes.

Q. Did you play any games with them in there? A. Not in the afternoon.

Q. You heard this in the afternoon, didn't you? A. Yes, sir.

Q. Didn't you swear that you heard it in the evening, at the preliminary hearing? A. No, sir.

Q. Didn't you swear that you heard that remark in the evening, at the preliminary hearing, — about being on the hog? A. Not that I remember of.

Q. What was the name of the game that you fellows generally played there in that bar room? A. We called it pig, — game of pig.

Q. Give the full name of it. A. "Pig's arse."

Q. What is the expression when a man is stuck in that game, and has to set up the drinks? A. He is stuck.

Q. No, but what expression do they generally use? A. I don't know of any other expression.

Q. Don't a man stuck say, "I am on the hog?" A. I never heard it so.

Q. Didn't you make that statement that night in playing a game, when you were stuck for the drinks, that "I am on the hog?" A. I don't think I did.

Q. You swear to that? A. I don't think I made that expression.

Q. Will you swear that you did not? A. I could not swear I did not, but I don't think I did.

Q. That was a common game played in your place of business, wasn't it, by the railroad men? A. It had been played there more or less.

Q. How is the game played? A. Played with matches.

Q. Just how do they play it? Tell the jury how they play it; we want them to know how the game is played. A. It is played with matches. Take two matches, and mark one side of them.

Q. Do you take a paper and mark anything on the paper? A. Yes, sir.

Q. [handing witness paper]. Draw right out on the paper just the way you do when you start in to play that game in your bar room. A. That is the way they start it [indicating on paper].

Q. That is the way they start, is it? A. Yes, sir; then they take two matches.

Q. [counsel hands witness two matches]. A. Want square matches.

Q. I haven't any square matches. A. I have.

Q. Well, take two square matches. A. They mark one side of the matches, and then drop them. When one of the matches came up with marked side up, they put down a mark here [indicating].

Q. Commencing where? A. Commencing with the eye. When another one comes down, they put on one ear; and the next, one ear; the next one, one leg; the next one, another leg; the next one, another; and the next one; and then the tail; and then the one that gets the ninth one is stuck.

Q. And that is what is termed "pig's arse?" A. Yes, sir.

Q. When the man has the ninth one, doesn't he say, "I am on the hog?" A. I never heard that remark, that I know of.

Q. Didn't you see O'Neil play that game that day in your bar room? A. I don't remember that he did.

Q. Will you swear that he did not? A. No, I wouldn't swear that he did not; I don't think he did.

Q. When O'Neil came in and bought a pint of whiskey of you, some time after 8 o'clock that evening, what were you engaged in then? A. I think we were playing a game; I will not be sure.

Q. Playing that game you have described to the jury, weren't you?

A. Yes, sir; I believe so.

Q. And who was stuck? A. I cannot tell.

Q. Weren't you stuck? A. I don't remember.

Q. Didn't he come in just as you were stuck, and didn't you take him into the crowd and set up the drinks, and give him a glass of beer? A. I gave him a glass of beer, but it was not on account of being stuck.

Q. Didn't you treat the rest at the same time you treated him? A. I don't remember.

Q. Do you remember what he paid you that night for that liquor?

A. He paid me 50 cents, either two quarters or a half a dollar.

Q. You are not positive of the denomination of the coins? A. No, sir.

Q. How do you remember that it was a silver piece that you received at all? A. I remember because he gave me the right change.

Q. How many customers were there in your place of business that evening? A. I don't know.

Q. Fifty? A. Not at that time.

Q. How many sales had you made from 6 o'clock, from the time that you came back from supper, until you sold that liquor to O'Neil, to the best of your knowledge? A. Oh, I couldn't tell how many sales I had made.

Q. And can you tell the exact change that every customer gave you that came in there from the time that you came back from your supper to the time that you made the sale to O'Neil? A. No, sir.

Q. Just how is it that you can tell the exact change that O'Neil gave you that night? A. Because I remember what he gave me; I remember that he gave me the right change.

Q. And you take from the fact of your memory, that he gave you the right change, and the price of a pint of whiskey and get at it that way, that he must have given you 50 cents, don't you? A. I remember he gave me 50 cents.

Q. You remember he gave you 50 cents. Why can't you remember in what he gave it to you, whether it was a fifty-cent piece, or whether it was small change, or what it was? A. I don't understand the question.

Q. If you remember there was 50 cents, why can't you remember what the denomination was that you received in pay for that whiskey, whether it was small change or whether it was a fifty-cent piece? A. It was either a fifty-cent piece or two quarters.

Q. How do you know it was either? A. I remember.

Q. If you remember it, why don't you remember which one it was?

A. I wouldn't swear which one it was; I know it was one of the two.

Mr. KNOWLTON. I did not quite hear that answer, Mr. Witness.

THE WITNESS. I don't remember which one it was; I know it was one of the two.

Q. How many pints of whiskey did you sell that night? A. I couldn't tell you.

Q. Whom else did you sell pints of whiskey to? A. I don't remember.

Q. Tell me one person that you sold a pint of whiskey to that night? A. I don't remember one.

Q. Tell me the cash that you received for one pint of whiskey that night besides the pint that you sold to O'Neil?

SHELDON, J. He said that he did not remember selling any other pint.

Mr. DOWLIN. No, he says, "I don't remember —"

SHELDON, J. He says he don't remember the selling of any other pint, so he cannot well remember what was paid.

Mr. DOWLIN. Excuse me, your Honor.

SHELDON, J. Well, you may put the question, but have you not nearly exhausted this subject?

Mr. DOWLIN. Yes.

Q. Did you sell any other pint of whiskey that night? A. Not that I remember of.

Q. How much was the whole amount of your business that day? A. I can't tell you now; I could tell you if I had the book; I have a book at home.

Q. When did you make up your accounts that day? A. About 11 o'clock that night.

Q. Did you count up your cash at any time during the day? A. No, sir; I did not.

Q. Do you know how much you received that day until 11 o'clock that night? A. I say I don't remember now; I could tell, if I had the book here, how much it was.

Q. How many men were there handling the cash that day? A. Not but two, that I remember of, — my father and myself.

Q. Anything to keep the man that worked for you from going to the cash drawer? A. No, sir.

Q. Did you see O'Neil again that night? A. After he left there?

Q. After he left there? A. No, sir.

Q. At 8.30? A. No, sir.

Q. Or about that time? Did William O'Connell come into your place of business that night? A. I don't remember whether he did, or not.

Q. Do you remember Wood coming in with any one else than those that you have named, that night? A. No, sir.

Q. Would you swear that he was not in there with any one else?

A. No, sir.

Q. How long had Wood been in town that day?

Mr. KNOWLTON. You don't quite mean that, do you, Mr. Dowlin?

Mr. DOWLIN. Oh, no. I was talking with Brother Parkhurst. I withdraw that.

Q. I understood you to say that you did not remember selling anybody else a pint of whiskey? A. No, sir.

Q. Do you remember selling William O'Connell a pint of whiskey?

A. I don't remember it; no, sir.

Q. Did he buy a pint of whiskey in your place? A. I couldn't tell you.

Q. How many times had you seen Wood in your place, to the best of your knowledge, before that Friday with O'Neil? A. I saw him there Thursday night, I believe.

Q. What was going on at your place Thursday night? A. Well, they — we gave them free beer Thursday night.

Q. Had quite a crowd there? A. Yes, sir.

Q. Was O'Neil there? A. I believe he was.

Q. How long did that last that evening? A. It lasted until 11 o'clock, or nearly that time.

Q. Wood there? A. He was there in the fore part of the evening a little while, I think.

Q. Had Wood and O'Neil been drinking considerable in your place during the time that you remember seeing Wood around Buckland just before this Friday? A. I don't think that I saw him until Thursday before, — the day before.

Q. Did they come into your place on Thursday, do you remember?

A. Not that I remember.

Mr. KNOWLTON. A little louder, Mr. Witness.

SHELDON, J. Speak loud enough so that the prisoner can hear what you say, Mr. Woodward.

Q. Was there anything to keep any one from looking in from the driveway into your bar room? A. They could look in through the window.

Q. No curtains up? A. No, sir.

Q. No screens? A. No, sir.

Q. How many lights did you have in the bar room? A. We had a large lamp and a cigar lighter; that is all there was.

Mr. DOWLIN. That is all.

Mr. HAMMOND. I will ask you one question.

Q. (by Mr. HAMMOND). Was this phrase, "on the hog," an expression in common use there? A. I have heard it a number of times.

Q. What does it mean? A. I always supposed that it meant that one had no money, — “on the hog.”

LENA SCHONTAG — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Lena Schontag.

Q. Where do you live? A. Shelburne Falls.

Q. Do you know the defendant, John O'Neil, by sight? A. I did.

Q. Did you see him on Friday, January 8, at any time? A. Yes, sir.

Q. And when and where? A. Saw him about 8 o'clock, near the bridge, crossing the bridge, on the Buckland side.

Q. On which side of the bridge? A. On the Buckland side.

Q. Yes, but — A. On the south side.

Q. The down-stream side? A. Yes, sir.

Q. Buckland end? A. Yes, sir.

Q. State what you saw of him, and where he was, and all about it. A. I first saw him as he crossed State Street or Main Street, and I noticed he had on a long overcoat with the collar turned up; the hat I didn't notice.

Q. Can you state further his course? A. No, sir.

Q. Where were you standing, or whether were you standing still?

A. I was.

Q. And state a little more definitely where you were standing. A. I was standing on the Buckland side, on the down-stream of the bridge.

Q. State generally O'Neil's movements with reference to yourself. A. He cut across diagonally from Clement Street, and crossed on to the bridge and went past me.

Mr. KNOWLTON. And what?

THE WITNESS. Went past me.

Q. On the sidewalk where you were standing A. Yes, sir.

Q. Whether or not he was alone? A. He was.

Mr. HAMMOND. Inquire.

Cross-examination.

Q. (by Mr. DOWLIN). How do you know it was about 8 o'clock?

A. I started from my house about 7.20 or 7.17, the time the train was due. I went up to the office and was up there until a quarter of 8, and we come down and stood for a few minutes.

Q. Did you see any timepiece in the office? A. I did.

Q. Do you know what time it was when you left the office? A. Quarter of 8.

Q. How long did it take you to go from the office down to where you stood? A. I don't know; about four minutes, — four or five.

Q. How long had you been standing there when you saw O'Neil?

A. I don't know; a few minutes; not very long.

Q. Did you see anybody else there besides O'Neil? A. I did not, excepting the folks that were with me.

Q. Where did you go after you saw O'Neil? A. Went home.

Q. Just before or just after you saw O'Neil, did you see Julius Pfersick there? A. I did not.

Mr. BEER. I did not hear the answer.

Mr. DOWLIN. "I did not," she said.

Q. Were you standing alone? A. No, sir.

Q. Which way did you go home after you started from the position where you were standing? A. Which way? Up Depot Street, — hill.

Q. Where is your home? A. On Green Street.

Q. Where did O'Neil go after you saw him pass you? A. I suppose he went over the bridge; I don't know; I didn't watch him.

Q. Which direction was he going? A. Over towards the Shelburne side.

Q. How long was he in your sight? A. Well, not more than five minutes.

Q. You watched him for five minutes, did you? A. Well, I watched him as he crossed the street.

Q. Did it take him five minutes to cross from Ward's corner over to the Buckland side of the bridge? A. I don't know.

Q. Did you watch him go on to the bridge? A. Yes, sir.

Q. Watch him cross the bridge? A. No, sir.

Q. Did you see him meet any one on the bridge? A. No, sir.

Q. Did you see anybody go over across the bridge just after he went on to it? A. No, sir.

Q. Did you see anybody else around there at all excepting O'Neil? A. No, sir.

Q. Did you see any one just after you saw O'Neil? A. No, sir; not that I remember.

EDWIN E. HEATHCOTE — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Edwin Heathcote.

Q. Have you any middle name? A. E.

Q. What is your age? A. Twenty-one.

Q. Where do you live? A. Shelburne Falls, Buckland side.

Q. How were you employed on Friday, January 8? A. I was employed in the shoe peg factory.

Q. Whether you were at work during the day? A. Yes, sir.

Q. Whether you went anywhere away from your house after supper?

A. Yes, sir.

Q. Where first did you go? A. I went down to — down in the street first, and then went into the stable, and up to the post-office.

Q. Whether at any time you went into the pool room? A. Yes, sir.

Q. When first did you go into the pool room? A. I went into the pool room at quarter-past 8 or about 8 o'clock, and stayed there till a quarter-past 8.

Q. Was the proprietor of the pool room a relative of yours? A. No, sir.

Q. Whether you saw the prisoner, John O'Neil, that night? A. Yes, sir; I did.

Q. Where first? A. The first I saw him he was right near Wiswall's drug store.

Q. On what street is Wiswall's drug store? A. On Bridge Street.

Q. In what direction from the pool room? A. It is right there round the corner.

Q. About what time did you see him there? A. Between half-past 8 and twenty-five minutes of 9.

Q. Did you have any talk with him? A. I did a little.

Q. State what was said. A. I said, "Hello, Jack, are you going to the pool room?" He says, "Yes." "Well," says I, "you call 'Auction' out." And he said he would.

Q. Who was meant by "Auction?" A. Ed. Haller.

Q. Whether or not that was his nickname? A. Yes, sir.

Q. Who was Ed. Haller? A. The one we call "Auction."

Q. Whether or not he was running the pool room that night? A. He was.

Q. Was that the first remark O'Neil made to you? A. Yes, sir.

Q. What next? A. And then he went over and called him out.

Q. Where were you when he called him out? A. I was right by the electric road track there in a team.

Q. On which side did he go? A. He went on the west side.

Q. That is, the electric road side? A. Yes, sir.

Q. What did he say when he called him? A. As near as I could say, he told him to come out, there was a fellow out there waiting; not to keep him there all night.

Q. Did you see anything further of O'Neil at that time? A. Yes, sir; I saw him a couple of minutes after.

Q. State what was done then. A. I went over, and Haller came out and said something to me, and O'Neil stood on the steps that I was on.

Q. What was he doing on the steps? A. He was talking to Adolph Haller.

Q. Did you see anything that was being done? A. No, sir.

Q. Anything further? A. And he wanted to know where I was going. I told him to Buckland. He wanted to know if I would take him up. I says, "No, sir;" then he wanted to know, he says, "I will chip halves."

Q. Anything further? A. Then he wanted to know if I would take him and Ratty up, — that is, Adolph Haller. I said I wouldn't.

Q. Any further talk? A. That was the last words I had with him that night.

Q. Where were you going? A. Going to Buckland to a dance.

Q. Whether or not that was made known to John O'Neil? A. It was; I told him that was where I was going.

Q. Did you see him again that night? A. No, sir.

Q. Did you see him on the following day? A. No, sir; not the next day at all.

Q. Have you stated the time when this interview with O'Neil occurred, — what time by the clock? A. On Friday evening?

Q. Yes. A. Between half-past 8 and twenty-five minutes of 9.

Q. Did you see him Saturday evening? A. Yes, sir.

Q. Where and when first? A. Right back of the pool room.

Q. State the circumstances. A. I was out in the street, and the fellows came out and wanted to know —

Q. Not what the other fellows said, — what you saw. A. I went back and saw him lying there.

Q. Describe the place where he was lying. A. As you go out of the door, the road turns around back of the meat market.

Q. Which door? A. East door of the pool room.

Q. How near to the east door of the pool room was he lying? A. Well, I should say ten feet.

Q. What occurred? A. Well, we went over and started to carry him in, first, and Haller would not let us; let him lie there; and I went to Frost's stable and got a truck team and carried him home.

Q. What, if anything, did O'Neil say to you? A. Nothing at all until we got home.

Q. When he got home, whether he made any statement to you? A. After he got on the lounge — I don't know whether he remarked it to me or who, — he spoke, and he said he "fell off the bridge; go and get Dr. Upton."

Cross-examination.

Q. (by Mr. DOWLIN). Did you testify at the preliminary hearing? A. The last hearing?

Q. Yes, before Justice Lyman. A. Yes, sir.

Q. And in answer to a question put to you by the district attorney, "Did you hear what he said?" did you reply, "Well, I could not understand what he said. I was out near the arc light there. He opened the door and called Haller out"? A. Yes, sir; I made that remark.

Q. Was it true? A. As near as I could say; I gave my statement as near as I could understand what he said.

Q. Now, which way will you leave it, — as you testified at the preliminary hearing, or as you testify here to-day? [Objected to.]

SHELDON, J. Does it appear he testified to what he heard there? He has testified now to what he heard under the arc light. He testified now that he testified at the preliminary hearing in reference to that. It does not appear that it was the same occasion.

Q. (by Mr. DOWLIN). How far were you from the door of the pool room when O'Neil went to the pool room to call Haller out? A. Oh, it must be twenty-five or thirty-five yards; I don't know for sure what distance it is. It was right under the arc light, straight out in the road by the electric track.

Q. Haven't you said it was impossible for you to hear anything O'Neil said? A. I said as near as I could understand what he said.

Q. Are you positive to what he said? A. No, I am not, exactly; I couldn't swear to it.

Q. What time did you hire your team that night? A. We left the pool room at quarter-past 8 to hire the team, and it was hitched right up for us.

Q. How do you know it was quarter after 8? A. I looked at the clock in the pool room.

Q. Where did you get your team from? A. J. B. Frost's livery stable.

Q. And after you got your team, where did you drive to? A. Drove over the river as far as Frank Wood's sales stable.

Q. Point out on the map where Frank Wood's sales stable is, locating about where it is on the State road, as I understand it. A. Well, this is —

Mr. KNOWLTON. No, that isn't the State road at all.

Q. That is the State road there, and that is the bridge that comes across, and that goes up toward Buckland; and there is the street that turns up here by the Methodist church. Now, is it there? A. I should think it would be about in there.

Q. Somewhere about in there? A. Yes, sir; somewhere there.

Q. Who was with you? A. Ed Joyce.

Q. And where did you go after you went to Wood's stable? A. Turned round and came over the river again.

Q. Driving a pretty fair gait? A. Well, jogging along a good gait.

Q. Trotting the horse? A. Yes, sir.

Q. How long did you stay at the stable? A. At the Exchange stable?

Q. Yes. A. Turned right around and came back again.

Q. Turned right round and didn't stop at all? A. Yes, sir.

Q. And trotted the horse right back? A. No, didn't trot him very fast.

Q. Well, you trotted him? A. Yes, sir.

Q. Right back; and when you came back across the bridge on to the Shelburne side, did you then see O'Neil? A. No, sir.

Q. Where did you go then? A. We drove up as far as the marble shop and back.

Q. Where is the marble shop? A. On the Shelburne side.

Q. On what street? A. It is called Main Street.

Q. Or Bridge Street? A. Main Street turns right off of Bridge Street.

Q. Oh, off from Bridge Street? A. Yes, sir.

Q. Well, now, Main Street is indicated on the map right there. Now, will you show on the map just about where the marble shop is, as near as you can? A. It would be in here, about a mile up.

Q. About a mile, was it? A. From the town, or very near it, I should think.

Q. Right in there on that street? A. Yes, sir; right on the State road.

Q. How long did you stay at the marble shop? A. Just turned around and came back there.

Q. Came back onto Bridge Street? A. Yes, sir.

Q. And then where did you go? A. Came back and Ed Joyce got out and went into the pool room.

Q. By which entrance did Ed Joyce go in? A. It was the entrance right through the alleyway between his shoe store and the millinery store.

Q. Do you know for what purpose Joyce went into the pool room? A. He went in to see if Ed Haller was ready.

Q. Did he come out again? A. And I drove over to the end of the bridge and turned round and came back, and then he came out.

Q. Is this the time when you turned round by the bridge that you saw O'Neil? A. After I got by the drug store again.

Q. When you were coming back? A. Yes, sir.

Q. What was your object in sending O'Neil in, when you had sent Joyce in? A. Well, they both stayed, and I thought it was —

Q. They both stayed, so you sent some one else in, although you sent Joyce in? A. I didn't send Joyce in; he went in.

Q. Well, he went in to call out Haller? A. He went in to see if he was ready; said he would be in; and I drove over the river.

Q. And you drove to the Shelburne side of the bridge, or to the Buckland side? A. To the Buckland side.

Q. Drove right over there? A. Yes, sir.

Q. Turned round and came back? A. Yes, sir.

Q. Met O'Neil by Wiswall's drug store? A. Yes, sir.

Q. Point out on the map where that is. You see where the bridge is. A. Right here.

Q. There; is it indicated in Joel Thayer's building? A. Well, it is in the same building, right here.

Q. Well, it is on the river side of the Joel Thayer building? A. Yes, sir.

Q. And there you spoke to O'Neil and sent him into the pool room to call Haller out? A. Yes, sir.

Q. Why didn't you send him to call Joyce out? A. Well, I knew if Haller came, both of them would.

Q. Where did you meet Joyce after you hired your team? A. Met him right outside of the bank steps.

Q. Did you hire the team? A. Yes, sir.

Q. And you say you left the pool room with Joyce at quarter after 8? A. Yes, sir.

Q. And went directly across the street? A. To the stable.

Q. To the stable and there hired the team? A. Yes, sir.

Q. Joyce didn't go into the stable with you? A. No, sir.

Q. He didn't have anything to do with the hiring of the team? A. He was going to, — well, we were going to pay for half each; he waited outside, and I hired the team.

Q. When was the first time you said you saw O'Neil Saturday evening? A. Well, I didn't know just the time, but I should say about half-past 7, or near to that, or quarter of 8.

Q. Now, on Friday evening, when you sent him to call Haller out, was he standing still, or walking along? A. He was walking along.

Q. And that was about half-past 8? A. Between half-past 8 and twenty-five minutes to 9, about that time.

Q. Was he drunk? A. No, I shouldn't call him drunk, didn't seem to me; walked along straight enough.

Q. Anything unusual about his appearance? A. Not at all to me, not any more than ever I had noticed with him; the same.

Q. He appeared just the same then as he always did? A. All the same.

Q. Now, on Saturday afternoon, when you saw O'Neil, what time was it then? A. I didn't see him on Saturday afternoon.

Q. Well, the edge of Saturday evening? A. It was Saturday evening, at half-past 7, as near to that, I believe, — as I know.

Q. And whereabouts did you say that was? A. Right back of the pool room, in the alleyway.

Q. Now, what do you mean by back of the pool room? A. In the alleyway.

Q. In the alleyway just beyond Joyce's store? A. Just beyond Joyce's store.

Q. East? A. East as you go round there, turn towards the back of the butcher's shop, the meat market.

Q. Who was there with him? A. Oh, there was quite a gang there.

Q. Do you know Dubsey Woodward? A. Yes, sir; he was there.

Q. Do you know William O'Connell? A. Yes, sir.

Q. Was he there? A. No, I didn't see him.

Q. Well, can't you give me the name of some other that was there?

A. There was Bob Birch, Dubsey Woodward and Ed Haller and myself, and Ed Somers, and I don't remember how many more there were there, I didn't notice many, that is, to look to see who was there.

Q. What attracted your attention that way first? A. Well, I was coming down the street, and Bob Birch and somebody else came out, I don't remember who the other fellow was, and he says, "Why don't you hire a team and take this man home?" So I says, "Who is it?" I walked back in there and seen him.

Q. Well, just where did you see him, and what was he doing? A. He was lying on the ground.

Q. What was the matter with him? A. Well, I supposed he was drunk; that is what I thought he was.

Q. Did you smell liquor on him? A. Yes, sir.

Q. Could he help himself at all? A. No, sir.

Q. Absolutely helpless? A. Yes, sir.

Q. Well, what did they do with him? A. Well, we — they put — Dubsey Woodward was putting his overcoat under him, and I says, "Let's take him to the pool room, till I go over and get a team." And we went to carry him in, and they wouldn't — Auction Haller, Ed Haller, wouldn't let us take him in there; so we left him outside, and I went right over and got the team and took him home.

Q. Who went home with him besides you? A. Ed Somers.

Mr. HAMMOND. I have occasion to say that our next witness is sick, and has to be returned home at half-past 12, and also is a cripple; and I would like to have him take the place of this man.

MASON, C. J. Have the other side assented?

Mr. HAMMOND. They have assented to that, your Honor.

Mr. BEER. Yes; this witness can step down.

MASON, C. J. Are there any further questions to be asked of this witness?

Mr. DOWLIN. Yes, sir; there are one or two questions I want to ask him.

Q. (by Mr. DOWLIN). Who was present when you heard O'Neil make any remark at his house? A. His mother and Dubsey Woodward, and three little children.

Q. That all? A. Yes, sir; and Mr. Kennedy was there, too.

Q. What Kennedy? A. P. J., Patrick, the liveryman.

Q. He was in a drunken condition when he made those remarks?
A. Yes, sir.

TIMOTHY M. KENNEDY — *sworn*.

Q. (by Mr. HAMMOND). Your full name is Timothy P. Kennedy?
A. Timothy M. Kennedy.

Q. Do you know John O'Neil, the prisoner? A. Yes, sir.

Q. Whether or not you saw him on Thursday or Friday, January 7 or 8? A. Yes, sir.

Q. On both days? A. Yes, sir.

Q. What did you see of him on Thursday? A. I can't remember seeing him Thursday; I saw him Thursday night.

Q. And where? A. Up to the Woodward House.

Q. Was he there in the bar room? A. Yes, sir.

Q. And where did you first see him on Friday? A. I saw him at Ward's corner there, by the Odd Fellows building.

Q. At what time? A. I should say between 10 and 11 o'clock in the morning.

Q. What were you doing? A. I was going up to the Woodward House.

Q. What did he do? A. I asked him up with me.

Q. Did he go? A. Yes, sir.

Q. What did he do at the Woodward House? A. We had two drinks.

Q. Who paid? A. I did.

Q. How long did you remain there? A. Probably half an hour.

Q. What were you doing while there? A. Drinking them two drinks.

Q. Anything else? A. Not that I can remember of.

Q. Where did you and O'Neil then go at the end of the half hour?
A. We came down the hill again, and I went home to dinner, and I left him there on the street.

Q. Did you see him after dinner? A. Yes, sir.

Q. At what hour first? A. Between 1 and 2 o'clock.

Q. Where? A. Over the river. I was over there standing, and he came over in front of Jenks' store. He was over in front of Jenks' store, I was standing there this side of Joel Thayer's building.

Q. What was said? A. I can't remember.

Q. Where did you go? A. Went into Haller's pool room.

Q. What time? A. Round 2 o'clock.

Q. How long did you stay? A. Till about half-past 2.

Q. Where did you go then? A. Over the river, up to the Woodward House.

Q. What time did you get there? A. Between half-past 3 and 4 o'clock.

Q. Did anybody go with you besides O'Neil? A. James Wood.

Q. What did you do at the Woodward House? A. We had three or four drinks.

Q. Who paid? A. I paid for some and Wood paid for some.

Q. Did O'Neil pay for any? A. I didn't see him.

Q. How long did you remain at the Woodward House? A. We remained there until 5 o'clock, probably.

Q. Did O'Neil remain for the same length of time? A. Yes, sir.

Q. Wood, too? A. Yes, sir.

Q. While you were there, what, if anything, did O'Neil say about his condition as to money? State all he said. A. He didn't say anything that time we were there; we came down street and went up again.

Q. What time did you return to the Woodward House? A. Probably quarter-past 5 or half-past 5.

Q. What did you do at that visit to the Woodward House? A. We had some more drink.

Q. Who paid? A. I paid for some and Wood paid for some, I think.

Q. At this time, whether any remarks were made by O'Neil, that you remember, and if so, state it. A. He made some remark about being broke, or something like that.

Q. You state the words that he used. A. I don't believe I can remember the exact words he used.

Q. Try to refresh your recollection. Recall whether or not you have been able to state the words he used, and, if so, state. A. I have said he said something about being broke. I couldn't say whether he said he was "on the hog," or not. I don't believe I ever stated he said he was "on the hog."

Q. Do you remember whether he used the words, "You know, boys, when I have got the price I spend it, but I haven't got it now"? A. Yes, he did say that.

Q. How long did you remain at the Woodward House this last visit before supper? A. We left there, I should say, quarter or ten minutes to 6; in that neighborhood.

Q. How many of you? A. Me and James Wood, Reuben Fenton and O'Neil.

Q. Reuben Fenton your cousin? A. Yes, sir.

Q. From Northampton? A. From Leeds.

Q. Where did you go as you left the house? A. We walked down the hill, and me and Fenton went home.

Q. Where did you separate? A. We separated on Clement Street, just around the corner by the Odd Fellows building, going up the hill.

Q. What time did you and Fenton go home? A. I should say ten minutes to 6; somewhere round there.

Q. Did you leave O'Neil and Wood? A. Yes, sir.

Q. Together near the corner? A. Yes, sir.

Q. Did you see which way they went? A. No, sir.

Q. Did you go home to your supper? A. Yes, sir.

Q. Whether you were down town again that night? A. I was.

Q. When? A. I came down about 7 o'clock.

Q. Where did you go? A. I went up to the Woodward House.

Q. Whether you met any one there? Did you meet any one at the Woodward House? A. I can't remember who I met up there. I met O'Neil, — no, I didn't; I met Wood on the street, and went up.

Q. You and Wood went up about 7 o'clock? A. Yes, sir.

Q. How long did you remain there? A. I can't say how long I remained there; might have been 9 or 10 o'clock, and might have been later, when I left there.

Q. How long did James Wood remain? A. He remained until half-past 8, I think.

Q. On that occasion did you see John O'Neil? A. Yes, sir.

Q. When first did you see him? A. He came in the Woodward House.

Q. About what time? A. I should say it was about quarter-past 8; between 8 and quarter-past; somewhere round there.

Q. Which door did he enter? A. I can't remember.

Q. See him doing anything after he got in there? A. I heard him call for a pint of whiskey.

Q. Did you see what was done? A. No, sir.

Q. Did you observe his taking it up? A. No, sir; I couldn't swear whether I saw him take it up or not.

Q. What did he do, if anything, after he called for the pint of whiskey? A. I heard the bartender say, "Have a drink," and I think he took a drink.

Q. After the taking of the drink, what did O'Neil do? A. He walked out.

Q. Alone? A. Yes, sir.

Q. Whether any other person went out about the same time? A. James Wood went out; might have been a minute or two after him.

Q. Did you see O'Neil again that night? A. No, sir.

Q. Did you see him on Saturday? A. Yes, I did.

- Q. When first? A. Saturday afternoon, I think.
- Q. Where? A. Over the river, in front of the barber shop.
- Q. Any other persons present? A. Not that I can remember of.
- Q. Remember Will Shaw being there? A. Will Shaw was there when I met him after I come out of the barber shop.
- Q. Then this first time was a little earlier? A. Yes.
- Q. What was O'Neil doing the first time you met him? A. He was standing there.
- Q. Any one with him? A. I can't remember whether there was or not, now.
- Q. Say anything to him? A. Yes, sir; I suppose I spoke to him.
- Q. Do you remember anything that was said? A. No, sir.
- Q. In reference to what had occurred the night before? A. Not at that time.
- Q. When next did you see him? A. After I come out of the barber shop.
- Q. Who was there then? A. Me and Will Shaw.
- Q. Was there anything said by him and Will Shaw? If so, what did Will Shaw say, and what did he say? A. Yes; Will Shaw asked him if he could say where he was last night, — prove where he was.
- Q. What did O'Neil say to that? A. He said he could.
- Q. Whether there had been any reference to what had occurred, — whether that had been talked about? A. Well, I suppose it had, but I couldn't remember what was said. [Objected to.]
- Q. Whether you had heard of the death of Mrs. McCloud at that time? A. Yes, sir.
- Q. Whether you heard Will Shaw mention it? A. Well, I heard him mention it there.
- Q. What did he say about it there? A. Well, I can't remember what he said.
- Q. Did you see O'Neil later? A. I did.
- Q. Where? A. Over the river.
- Q. At what place? A. In front of the Odd Fellows building.
- Q. Hear him talk? A. Yes, sir.
- Q. What did you hear him say? A. He came along and told me he just hit a tramp.
- Q. State what he said about hitting the tramp. A. Well, I asked him what he hit him for, and he said the tramp hit him last night, and that is all he said.
- Q. Did he use any other phrase different from the word "tramp?" A. "Hobo," probably, — he used that.
- Q. Did he state where he was when the tramp hit him? A. Out in front of the house.
- Q. In front of his own home? A. Yes, sir.

Q. Did he say what time in the day or night the tramp hit him?

A. No, sir.

Q. Did he say anything with reference to being hit when he went home? A. Not that I can remember of.

Q. Did he say anything about the tramp getting his money? A. Not that I can remember of; he may have.

Q. What? A. He may have said it, but I can't recollect it.

Mr. HAMMOND. Inquire.

Cross-examination.

Q. (by Mr. DOWLIN). What was the first time you said you saw O'Neil Saturday afternoon or Saturday? A. In the morning, I think.

Q. What time of day was it when you saw him in front of the barber shop? A. Between 1 and 2 o'clock.

Q. And how much later was it that you saw him over in front of Odd Fellows Hall? A. Between 3 and 4, I should think.

Q. Nearer 4 than it was 3? A. Well, I couldn't say; I don't know.

Q. It might have been after 4, might it? A. No, I don't hardly think it was after 4.

Q. Somewhere about 4 o'clock? A. I should say it was in that neighborhood, between 3 and 4.

Q. He had the appearance of having been drinking Saturday, had he? A. Yes, sir.

Q. When you saw him in front of Odd Fellows Hall Saturday afternoon, about 4 o'clock, wasn't he pretty drunk, Mr. Kennedy? A. Saturday afternoon?

Q. Yes, about 4 o'clock. Wasn't he pretty drunk? A. I think he could walk all right.

Q. Well, wasn't he pretty drunk? A. Well, he was under the influence of liquor; you could notice it on him easy enough.

Q. When John O'Neil has been drinking liquor freely, does he talk and act in his usual and ordinary manner? A. No.

Q. Have you ever heard him before, when he had been drinking, make foolish and inconsistent statements? A. Yes, sir.

Q. And did you attach any particular meaning to the statement about the hobo, in the condition in which O'Neil was when he was in front of Odd Fellows Hall at 4 o'clock Saturday afternoon?

Mr. KNOWLTON. Wait a minute, Mr. Kennedy.

SHELDON, J. You need not answer that question; the question is excluded.

Q. On Friday afternoon, when he made the statement, "I used to spend it, Tim, when I had it," or something to that effect, was he intoxicated? A. He was.

Q. Have you ever heard him make that statement, when, to your knowledge, he had money? A. Have I ever heard him make it?

Q. Yes, or something similar to it? A. I can't say I have; I may have and I may not; I can't remember any time he said it.

Q. Have you ever made a statement similar to that when you were in the possession of money?

Mr. KNOWLTON. Wait a minute.

SHELDON, J. That is not competent.

Q. How many drinks had you and O'Neil had together that afternoon, — Friday afternoon? A. Oh, we may have had eight or ten.

Q. Do you remember, after going out of the Woodward House, of meeting any one about 6 o'clock? A. I do.

Q. Who was it? A. Dennis O'Brien.

Q. Where did you meet Dennis O'Brien? A. Met him there just around the corner there, on Clement Street, down by the Odd Fellows building.

Q. Met him on Clement Street? Did you stand and talk with him? A. I did not.

Q. You passed right along? A. Yes, sir.

Q. Then you left whom talking with him? A. Wood and O'Neil.

Q. Was that the last you saw of Wood and O'Neil, — they were standing on Clement Street by the Odd Fellows building? A. Yes, sir.

Q. Talking with Dennis O'Brien? A. Yes, sir.

Q. When you saw Jack O'Neil come in and call for a pint of whiskey Friday evening, what were you doing? A. I was playing a game there at the bar.

Q. Whom were you playing with? A. I was playing with James Wood, and there was another besides James Wood was playing, and I can't remember who else was playing.

Q. Was Leon Woodward, the bartender, playing with you? A. Well, I couldn't swear whether he was playing, or not.

Q. Did you know Hattie Evelyn McCloud? A. Knew her by sight.

Q. Did you, while in the company of O'Neil or Wood that day, see her? A. No, sir; not that I can remember.

Q. Did you meet her on your way home? A. Not that I can remember of; I don't believe I did.

Q. And in going from Ward's corner you would pass right up by Amstein's store along the State road about how far? A. Oh, probably fifty yards.

Q. When you saw O'Neil in front of the barber shop on Saturday afternoon, did he appear to you to be intoxicated? A. I noticed drink on him; he must have been drinking.

Q. Well, just what signs indicated to your mind that he was intoxicated? A. His actions.

Q. Well, what were his actions? A. Well, I couldn't say what they were, but the way he talked and walked.

Q. The way he talked? How did he talk? A. Well, he didn't talk the same as he would if he was sober.

Q. Foolish? A. Well, I don't know, some foolish; there was some foolish remarks made.

Q. Incoherent were his statements? A. Well, I couldn't say; I can't remember every statement he made.

Q. You had plenty of money on Friday, didn't you, Mr. Kennedy?
A. I had some.

Q. You had plenty of money in your possession some days prior to Friday, hadn't you? A. Yes, sir.

Q. Have you not stated, while in the possession of money, or made use of such expressions as these, "I am busted," or "I am on the hog?"

Mr. KNOWLTON. I pray the judgment of the court.

SHELDON, J. That is not competent.

Mr. DOWLIN. We will save an exception. And in the presence of O'Neil, — I wish to add to the question.

Mr. KNOWLTON. Wait a minute; I object.

SHELDON, J. Well, it is simply to add that to the question, which has already been ruled upon.

Mr. KNOWLTON. The court understands the Commonwealth objects.

[The whole question was read by the stenographer, as follows: "Have you not stated, while in the possession of money, or made use of such expressions as these, 'I am busted,' or 'I am on the hog,' and in the presence of O'Neil?"]

SHELDON, J. You offer that simply meaning to ask whether the witness has not made the statement falsely, not to show the meaning of the expression "on the hog"? If you want to show that the expression "on the hog" was used among these people in any different sense from what the government contends for, you can show that, of course.

Mr. DOWLIN. That is exactly what I offer it for. I offer it to show that the expression "on the hog" did not mean and was not used commonly among the people of that section in the sense that they were broke or out of funds.

SHELDON, J. You may ask him as to the meaning in which the expression "on the hog" was used among these people.

Mr. KNOWLTON. But the question that was put had no reference to that matter.

SHELDON, J. I don't think it had, and that question is excluded.

Mr. DOWLIN. I will let the question go as it was.

SHELDON, J. It is excluded, however, with the statement that you are at liberty to show, by this witness or by any other witness, what the meaning of the expression, "on the hog," among these people was.

Mr. DOWLIN. All right.

Q. Is the only meaning that you understand of the term that "I am on the hog" —

Mr. KNOWLTON. I didn't hear that question.

Q. Is the only meaning that you understand of the term that "I am on the hog," that the one who expresses it is out of funds? A. I have heard it expressed for other reasons than that.

Q. For what other reasons have you heard it expressed than that? A. Well, I have heard it expressed about certain towns. They say certain towns are on the hog, — anything like that.

Q. As to individuals, for what other reasons have you heard it expressed? A. I can't say.

Q. How long have you known O'Neil? A. Ten or twelve years, probably more.

Q. Used to work on the railroad with him? A. Yes.

Q. How long did you work together on the railroad? A. About a year.

Q. Was he at work on the railroad at the time you were injured? A. No, sir.

Q. With you? A. No, sir.

Mr. KNOWLTON. Mr. Kennedy comes with some difficulty, and thinks he must go back on the next train, and it would be well to get through with him. Of course he can come back.

Mr. DOWLIN. We have some questions.

Mr. KNOWLTON. Well, you will come back on the next train.

EDWARD JOYCE — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. Edward Joyce.

Q. Where do you live? A. Shelburne Falls, Buckland side.

Q. What is your age? A. Nineteen.

Q. Do you know the defendant, John O'Neil? A. Yes, sir.

Q. How long had you known him before his arrest? A. Well, I have known him probably ten or fifteen years.

Q. Whether or not you saw him in the two or three weeks previous to his arrest, and from time to time? A. I don't know but I may have.

Q. Were you at work at that time? A. Yes, sir; at the store.

Q. What store? A. Joyce's shoe store.

Q. Did you see him on Friday night, January 8? A. Yes, sir.

Q. Where? A. He was standing at the back door of the pool room, in the coal shed, near the alleyway.

Q. At what hour? A. I should say somewhere between 8 and half-past 8; I wouldn't say for sure; that is as near as I can place it.

Q. What had you been doing previously? A. We were getting ready to go to Buckland to a dance.

Q. When you saw him, whether you had been in the pool room or not? A. Before this?

Q. Yes. A. No, sir; I don't think I had; I might have been, but I don't think so.

Q. Were you then on the way to the pool room? A. Yes, sir; just going in the door.

Q. Did you have a team? A. Yes, sir.

Q. Who was driving the team? A. Mr. Heathcote.

Q. Which Heathcote? A. Edwin Heathcote.

Q. Did you hear O'Neil say anything or do anything at that time? A. He had a bottle, and offered me a drink.

Q. What did he say? A. "Have a drink?" I think; I don't know just the words he used.

Q. Did you take a drink? A. No, sir.

Q. What further did you do, if anything? A. We went there and asked Mr. Haller if he could go, and he said he wasn't ready; and I stayed about five minutes and came out, and went in the team, and we drove up the river, I believe as far as Wood's livery stable.

Q. Did you see O'Neil again? A. Yes, sir.

Q. Where? A. In the pool room.

Q. State what you observed at that time. A. Well, I was standing there, and he stuck his head in the door, and he says, "Why in hell don't you fellows come out here, and not keep this fellow waiting in the cold?"

Q. Did he come into the pool room at that time? A. He stuck his head in the door.

Q. Did you see anything further of him at that time, that evening? A. Well, when we were driving by, going up the street, he was standing in front of Halligan's store, he and a couple of fellows, I believe.

Q. Whether you saw him make any exhibition of money that Friday evening? A. No, sir; I didn't see any.

Q. Did you see him on Saturday? A. Saturday I was sweeping up the walk, and Peters was describing how he found Mrs. McCloud, and he (O'Neil) began to talk.

Q. State the substance of what he said. A. I didn't hear; I kept on sweeping.

Q. About what time in the morning was that? A. I don't know whether that was late in the morning or early in the afternoon.

Q. Whether it was near noon? A. Well, it was somewhere round near noon; yes, sir.

Cross-examination.

Q. (by Mr. BEER). What time did you go to the pool room the first time that night? A. I don't know just what the time was; it was somewhere between 8 and half-past 8; might have been ten or fifteen minutes past 8; I wouldn't say.

Q. Did you go to the mail from the pool room? A. No, sir; I don't believe I did.

Q. Where did you go to the mail from? A. I think I went up to the depot, and from the depot went to the mail; I wouldn't say for sure, because I don't exactly remember, now.

Q. Were you at the depot at the time the train arrived? A. I got started for the depot; I don't know whether I went there, or not.

Q. You are not sure about that? A. About going to the depot?

Q. Yes. A. I know I started for it, but don't know whether I went as far as the depot, or not.

Q. How far do you know you went? A. I know I went as far as Ward's corner, — I know that.

Q. Anybody with you? A. No, sir; went alone.

Q. What time was it you went to Ward's corner? A. Well, it was just about as I got to Ward's corner the New Haven train was coming in, — whistled.

Q. How long did you stay at that place? A. Stayed long enough to get a match.

Q. What time was that? A. Somewhere around 7 o'clock.

Q. What time did the New Haven train arrive on that night? A. I don't know; it is due at six minutes past 7.

Q. At the time it arrived you were at Ward's corner? A. Yes, sir.

Q. Did you proceed from there to the depot? A. I don't remember, — I think I did; I might have gone back to the store again.

Q. What time did you close your store that night? A. I didn't stay there until it was closed up; my father closed it.

Q. What time on Friday night did you close the store at that time? A. I don't know; I didn't stay.

Q. Did you close the store at 6 o'clock? A. No, sir.

Q. Whereabouts in relation to Haller's pool room is your store? A. The pool room is back of the store; the store is on Bridge Street.

Q. Please point out on the map just where your store is? You see the river there? A. It is right here I think [indicating]. Here is the pool room, and here is the store over this way.

Q. Is the building of the pool room and your store the same? A. They are not owned by one man.

Q. Are they connected so as to be one building? A. No, sir; have to go outside to get in the pool room.

Q. Is it all the same structure, same building? A. No, I don't think it is.

Q. Entrance from different quarters? A. Yes, sir.

Q. What time did you leave your store that night? A. Well, I don't know what time it was; I think it was in there somewhere around half-past 6; I wouldn't say for sure.

Q. Did you enter your store after half-past 6? A. I might have; I don't know; I don't remember.

Q. After the New Haven train came in, where did you go? A. I think I went to the post-office; I wouldn't say for sure.

Q. Where were you when the Boston express train came in? A. I think I was at the post-office, I don't know; I think I was; I usually am there; I guess I was there then.

Q. You are speaking from your custom only? A. Yes, sir.

Q. Not from memory? A. I am speaking from custom, because I am always at the mail every night.

Q. Do you remember anything about the mail that night? A. No, only that William O'Connell came up and spoke to me, — spoke to two or three of us.

Q. Where was he? A. We were standing in front of the jewelry store.

Q. On the same side as the post-office, — same side as your store? A. Yes, sir.

Q. Did you see any one you were going to ride with at the post-office? A. I don't know but they were there; I wouldn't say, — Mr. Heathcote and Mr. Haller.

Q. Were you there at the post-office at the time of the delivery of the mail? A. Yes, sir; I think I was.

Q. Where did you go then? A. Well, I don't know whether I went down to the street, or not; I think I did. I think I had some mail, and had to bring it to the store; I wouldn't be sure.

Q. You said you were not certain you went to the store after half-past 6? A. I say so now.

Q. You don't know where you went after the mail was delivered? A. I was on the street somewhere.

Q. Didn't you go across from the jewelry store, and immediately after the delivery on the mail? A. Across where?

Q. To the other side of the street? A. I don't remember; I had a bundle I had to bring up to the jewelry store.

Q. Was the jewelry store closed at that time? A. It closed about

8 o'clock, I think, — that is, it was just closing up; I think I went down to the store to get the bundle to bring up.

Q. Jewelry store? A. Yes, sir; that is where the express office is.

Q. You think you brought a package from the jewelry store to your store about 8 o'clock? A. Somewhere around that time.

Q. Where did you go from that place? A. Well, I think I met Mr. Haller and Mr. Heathcote; then we went to get the team. I went as far as the bank steps.

Q. Where did you again see Mr. Heathcote? A. After he got the team.

Q. Where were you? A. I was at the bank steps, I believe, at the corner there.

Q. Did you get in and ride with them from there? A. I think we rode over as far as across the bridge; I wouldn't say for sure.

Q. Did you go into the pool room before riding with him? A. I don't hardly remember.

Q. Before riding with him, didn't you see Jack O'Neil? A. I don't know whether that was after I got into the team, or before I got into the team at all.

Q. Have you not sworn in another court that before you rode with Mr. Heathcote you had seen Jack O'Neil near the pool room? A. I don't think I have.

Q. Did you see him? A. Did I see him? Yes, I see him.

Q. Where was he when you first saw him? A. He was standing near the pool room door, back there near the coal shed in the alleyway.

Q. Did you send any message by him into the pool room? A. Did I? No, sir.

Q. Did you know of any message sent by him by any one? A. I believe Mr. Heathcote did.

Q. Did you hear any one? A. Did I hear it? No, sir. It might have been sent when I was inside.

Q. You were inside if any message was given to O'Neil? A. Yes, sir.

Q. Where, after you began to ride, did you go with Mr. Heathcote? A. I think we drove across the river and up as far as Wood's livery stable, and we drove up the Shelburne side of the river, as far as the old academy or marble shop, somewhere in that vicinity.

Q. Before doing that had you seen O'Neil? A. Why, I had seen him, as I said before, in the pool room door.

Q. Before going up to the academy? A. Well, sir, I think it was.

Q. And didn't you then deliver a message to him requesting some one to come out from the pool room? A. Did I?

Q. Yes. A. To him?

Q. Yes. A. No, sir; I don't believe I did; I didn't ask any one to come out of the pool room.

Q. Where, after you went to the academy, did you go before you went into the pool room? A. I don't understand your question.

Q. You went up to the academy, you say? A. Yes, sir.

Q. Riding? A. Yes, sir.

Q. Where did you go then? A. We drove back.

Q. Drove back where? A. I don't know whether we drove back to put up the team, or whether it was we drove over the river again.

Q. How many times did you drive over the river? A. Well, it may have been twice; I couldn't say, because I don't remember; I know we drove there once.

Q. Do you remember going to the Buckland side twice before you went into the pool room? A. No, sir, I don't; we might have gone over there twice, might have gone three times.

Q. Had you driven over the river at all before O'Neil asked you to drink? A. I don't think we did; I don't know.

Q. Did you see what he had to offer to drink? A. He had a bottle, but what it was I don't know.

Q. How do you know it was a bottle? A. Why, it was the shape of a bottle.

Q. Where was it? A. In his hand.

Q. Where was he standing? A. In the pool room door.

Q. Was there a light there? A. There was a light in the pool room.

Q. Was the door open? A. Yes, sir; I believe it was; I couldn't say.

Q. Who was standing with him? A. I think it was Adolph Haller and Dubsey Woodward.

Q. How large a bottle was it? A. Well, I don't know whether it was a pint, or quart; I don't know what it was.

Q. You don't know but you drove over to the Buckland side twice before you went into the pool room? A. We might have, and then we might not have only driven once; I can't remember the exact number of times we drove over, now.

Q. And after you did go into the pool room, what did you do there? A. I went in to see if Mr. Haller was ready to go to Buckland.

Q. How long did you stay there? A. Probably five minutes the first time.

Q. Now, what time was it that you left the first time? A. I don't know; it was some time between 8 and half-past 8; it might have been ten or fifteen minutes past 8 I left the first time.

Q. Do you remember of swearing it was 8.15? A. No, sir, I don't; I don't remember what I swore to then.

Q. That you looked at the clock and saw that it was 8.15? A. I think I remember looking at the clock once, at the second time I came in, it was twenty minutes past 8; I wouldn't say for sure.

Q. That was the second time? A. Yes, sir.

Q. That was the second time that you had been in the pool room?
A. I think that it was.

Q. Then how long did you stay there after twenty minutes past 8?

A. The second time I might have stayed in there ten minutes.

Q. How many times did you go into the pool room? A. Twice, I believe.

Q. Are you sure? A. I am not sure.

Q. Whether any more, or not? A. I don't think I went more; I don't know, not positive. I wouldn't swear to it. I can't remember the exact number of times, but I think it was twice, as near as I can remember.

Q. And it was the last time that you were in there, or the second time that you were in there, that you heard Jack called out, was it?
A. It was the second time, or the last time; I don't know how many times I was in there; I think the second time.

Q. Well, no other time occurs to you but the second? A. No, sir; I might have been in three or four times, but I think I was only in twice.

Q. Well, it was at the second time, then, that you heard Jack O'Neil — A. At what I think was the second time; yes, sir.

Q. Have you any reason to say that it was at any other time? A. No reason only that I can't remember; that is the only reason I can give.

Q. Now, what time of the day was it when you saw Mr. Peters?
A. Well, I don't know whether it was late in the morning or early in the afternoon; I don't know.

Q. What were you doing when you saw him? A. Sweeping off the sidewalk.

Q. Well, that is a morning duty, isn't it? A. Well, sometimes it is and sometimes it isn't.

Q. Well, was it that day? A. I might have swept it late the night before, I don't know.

Q. Did you sweep it that morning? A. I swept it, as I said I did, at 11 o'clock. I don't know whether I did, or not. It was rather dusty that day, and needed it.

Q. Did you see Mr. Peters as he came from the woods? A. No, sir; when I happened to see him he was standing on the corner there; there was three or four round talking.

Q. You had heard about the death of Mrs. McCloud, had you?
A. Yes, sir.

Q. And from many lips? A. Well, not very many, because everybody didn't know it.

Q. Wasn't it the topic all the forenoon there, of conversation? A. Well, I don't know but it was.

Q. You say the people were not excited over it? A. What is that?

Q. Do you say people were not excited over the event? A. I didn't say they were not excited.

Q. Were the people keeping mum about it? A. No, sir; but I wasn't round where everybody was talking, I was at the store.

Q. Well, the people were talking freely about it, weren't they? A. Well, they was where I could overhear it if I wanted to, probably.

Q. How many people were there around when Peters was imparting information? A. Oh, probably there was four or five; I don't know.

Q. You heard what he said plainly, did you? A. Peters?

Q. Yes. A. No, sir; not plainly.

Q. Did you hear anything that he said? A. Well, I thought at the time he was describing how he found the body; that is what I thought he was saying.

Re-direct examination.

Q. (by Mr. HAMMOND). Why were you driving your horse back and forth? A. Why were we?

Q. Yes, sir. A. Waiting for Mr. Haller.

Q. And why were you driving your horse back and forth while waiting for him? A. Well, we had no special reason; thought we would rather drive than stand still with the team.

WILLIAM P. MORRISSEY — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. William P. Morrissey.

Q. How old are you? A. Twenty-four.

Q. Where do you live? A. In Shelburne Falls.

Q. Which side? A. Shelburne side.

Q. What is your business? A. I work in the cutlery, Shelburne Falls.

Q. Whether you were employed on Friday, January 8? A. Yes, sir.

Q. And whether you had been during the two or three weeks preceding that at work in the cutlery? A. I had been part of the time; the cutlery wasn't running full time.

Q. Whether you knew John O'Neil? A. Yes, sir.

Q. And whether you saw him from day to day, or evening to evening, during the two or three weeks prior to January 8? A. I couldn't

say how often I saw him; I saw him different times, — perhaps every day.

Q. And where were you accustomed to meet him, if at all? A. Why, on the street or in Haller's pool room; he generally comes there nights.

Q. Did you meet him on Friday, January 8? A. I did.

Q. And where first on that day? A. In Haller's pool room, the first that I remember.

Q. And what hour? A. Why shortly after half-past 8 in the evening.

Q. Have you any means of fixing the hour? A. Yes, sir.

Q. State. A. By the clock that is in the pool room; if the clock is right, that is the time that he came in there.

Q. State what first you saw of him. A. I saw him first when he came in the door.

Q. Well, anything said? A. He called to Mr. Haller, that was running the pool room; told him that there was some one outside in a team wanted to see him.

Q. Can you give his expression? A. No, sir; I couldn't.

Q. And then state what followed. A. He spoke to this some one outside again, and then he came into the pool room.

Q. About what time did he come into the pool room? A. I couldn't tell, exactly; I should say about twenty-five minutes of 9.

Q. How long had you been there? A. I had been there since 6 o'clock, or near it; I couldn't place just the minute I went in there.

Q. When O'Neil came into the room, what, if anything, occurred or was said? A. Nothing was said only what I have told, that I remember of.

Q. What did O'Neil do after he came into the pool room? A. He stayed there a few minutes.

Q. What did he do? Did he sit down, or did he remain standing? A. I couldn't say what he did.

Q. About how long did he stay there? A. I couldn't say; a very short time; perhaps —

Q. Well, after that short stay, what did he do? A. He went out again.

Q. And what did you do? A. I stayed in there.

Q. When first did you go out? A. I went out a little while after he did.

Q. And where did you find O'Neil, if at all, when you went out? A. I found him in the coal shed, just outside the pool room.

Q. Whether any one else was there? A. Yes, sir.

Q. Who was it? A. Mr. Woodward.

Q. What is his name? A. Charles Woodward, and Adolph Haller.

Q. What were you doing there in the coal shed? A. We all drank it there.

Q. Who furnished the liquor? A. I couldn't say who did furnish it, — I think it was O'Neil.

Q. In what was it contained? A. In a bottle.

Q. What was said as you were drinking, if anything? A. O'Neil said that this pint he had belonged to Mr. Wood; he said that Mr. Wood had met a lady at the end of the bridge, and he went with her.

Q. What Wood? A. I don't know whether he said, or not, at the time; he meant Jimmie Wood, I suppose.

Q. I didn't get what you said about meeting a lady? A. O'Neil told us that Wood had met a lady at the end of the bridge, and went with her, and left this pint with him. He said, "We may as well drink it," and we drank it, or drank part of it there.

Q. How many drinks did you take from the bottle, each of you four, as far as you can recollect? A. We only drank once then.

Q. After drinking once there in the coal shed, state what occurred next? A. We all stepped back into the pool room again.

Q. Then what? A. We stayed there fifteen or twenty minutes, I should think.

Q. Then what occurred? A. We went out again.

Q. Didn't anything occur during the time you stayed there that ten or fifteen minutes? A. Nothing that I recollect.

Q. Then, going out again, where did you go? A. Out into the coal shed again.

Q. And who went with you? A. Mr. Woodward and Mr. Haller, and O'Neil.

Q. And what did you do in the coal shed the second time? A. We drank again.

Q. Whether it was from the same bottle? A. I think it was.

Q. And how long did you remain in the coal shed? A. Oh, I couldn't say; two or three minutes, perhaps.

Q. Did anything happen while you were in the coal shed? A. Yes, sir.

Q. What? A. Mr. O'Neil handed a bill to Haller, and told him there was a dollar that he owed him.

Q. Speak a little louder. Won't you repeat that? A. Mr. O'Neil took a bill out of his pocket, — he took two bills out. One bill he handed to Haller. He said, "Here's the dollar that I owe you." The other bill he put back in his pocket.

Q. Go on, now. A. Haller didn't want to take the bill at first.

Q. What did Haller say? A. Haller told him he only owed him 75 cents.

Q. Go on. What did O'Neil say? A. O'Neil said he did; he said he owed him a dollar, he said he borrowed a quarter of him afterwards. I understood that he must have borrowed 75 cents some other time.

Q. Well, now, go on and tell all. A. Haller finally took the bill and held it in his hand, looking at it. I see that it was a ten-dollar bill; I told Haller. Haller looked at it, and he said it was, and he handed it back to Jack, or Mr. O'Neil.

Q. Keep your voice up so that all can hear, please. A. O'Neil took the bill.

Q. Can you give Haller's expression as he took the bill? A. No, I couldn't.

Q. What did he say? A. I couldn't say.

Q. Well, go on. A. He handed the bill back to O'Neil, and O'Neil put it in his pocket, and said he gave him the wrong bill.

Q. What then? A. Then O'Neil called Haller outside of the coal shed shortly after that.

Q. Speak so we can all hear. A. We started to go into the pool room again, just got a short way in the door, and one of them called to me, and I went out there.

Q. Out to what place? A. Outside the coal shed.

Q. That is what is called the alley? A. Yes, sir.

Q. Well, — A. O'Neil asked me if I would go and get him a pint of whiskey; I told him I would, and he handed me a five-dollar bill.

Q. Where were you standing when he handed that to you? A. In the alleyway.

Q. And it was about what time, as nearly as you can give it? A. I should think shortly after 9 o'clock.

Q. Did you take the five-dollar bill? A. I did.

Q. Go on and state what was done. Was there not more conversation before you went away with the \$5? If so, give it. A. O'Neil told me, when he handed me the bill, he said he made the best piece of change that he had ever made; he said he got the ten-dollar bill back for \$1 at the Woodward House. And then I went after the pint with the five-dollar bill.

Q. Where did you go? A. I went to the Shelburne Falls House.

Q. And to whom did you present it? A. The five-dollar bill?

Q. Yes. A. To the bartender there.

Q. What is his name? A. Mr. Tooles.

Q. William H. Tooles? A. William Tooles; I don't know his middle initial.

Q. What did you buy? A. Bought a pint of whiskey.

Q. And paid — A. I paid 50 cents for it out of the five-dollar bill.

Q. What did you receive? A. I received \$4.50 in change.

Q. And what did you do with it? A. I gave it back to Mr. O'Neil.

Q. And what, if anything, did you do with the pint? A. I brought that back with me.

Q. And where did you give it to him? A. In front of Joyce's shoe store.

Q. Then go on and state what occurred. A. There was another gentleman joined us there, — Mr. Glassett.

Q. What is his first name? A. Thomas. We all drank there, — I believe they all did.

Q. How many? Name them. A. Mr. Woodward, Mr. Haller and Mr. Glassett and Mr. O'Neil and myself.

Q. Well, go on. A. We went from there down below to the next block.

Q. All of you? A. Yes, sir; Mr. Glassett went over the river, and another old gentleman came along there, — Mr. Nutting.

Q. John Nutting? A. Yes, sir.

Q. And Glassett went over the river? A. Yes, sir.

Q. Well, go on. A. We stayed down there a little while, and Glassett came back, and we went back to the pool room.

Q. Whether you all went into the pool room? A. I couldn't say whether we all went in, or not.

Q. Whether O'Neil went in? A. Yes, sir; O'Neil did. We went to the shed first, the coal shed again.

Q. What? A. I and O'Neil and Mr. Woodward went to the coal shed.

Q. State what happened when you and O'Neil and Woodward were at the coal shed. A. Why, we took another drink there.

Q. Yes. A. And O'Neil seemed to be taken sick; went out of the coal shed, and I stepped into the pool room.

Q. Keep up your voice so we can all hear. Where was O'Neil apparently taken sick? A. Where?

Q. Yes. Where was he when he was taken sick? A. In the coal shed.

Q. And what did he do first? A. He ran out the door.

Q. And did you see what he did when out the door? A. I did not.

Q. While you saw him, whether he was on his feet? A. He was on his feet as he ran out. That was the last I saw of him until he came into the pool room.

Q. When he came into the pool room, where were you? A. I was in the pool room.

Q. Where was Woodward? A. Woodward was in the pool room.

Q. When O'Neil came in, was there anything said? A. O'Neil said he had hurt his head.

Q. What did he say? A. Said he had run into the corner of the building and hurt his head. He came in and showed us his head. I looked at it. I couldn't examine it very well. Mr. Shaw stood up in a chair and examined it.

Q. Describe what you saw when you looked at it. A. I couldn't see it very well. I felt of his head, and could feel a raise in his head, where it was cut. I pulled off a small piece of skin, and then Mr. Shaw stood up in the chair and looked at it.

Q. What, if anything further, did O'Neil say? A. I don't remember his saying anything, then.

Q. How much time did you and Shaw spend looking at the bruise? A. Why, I perhaps did not spend more than three or four seconds; I couldn't say.

Q. Whether anything further was said about money? A. Nothing said there about money, that I remember.

Q. Anything further at any time about where the bill came from? A. I don't know whether he spoke about it after that again, or not.

Q. Let me refresh your recollection. Whether he said anything about where the dollar bill came from, at the time he supposed it was a dollar bill? A. Yes, sir; he said, when he handed the bill to Haller, it was a bill he had since he worked on the road.

Q. When was that with reference to the statement that he got the ten-dollar bill at the Woodward House, before or after? A. That was before.

Q. Did he at any time give you any other account of the origin of the money? A. No, sir.

Q. Did he ever tell you where the five-dollar bill came from? A. No, sir.

Q. Do you know whether he had the ten-dollar bill and five-dollar bill in his possession at the same time? A. No, sir; I didn't see them both at the same time.

Q. When you were there in the alley, what did he show you first? A. He handed me a five-dollar bill there.

Q. When had you seen the ten-dollar bill? A. I had seen the ten-dollar bill just before that.

Q. How much time between? A. Why, two or three minutes.

Q. Had you seen any change of money, or any change of things, going on between those two times? A. No, sir.

Q. When he handed you the ten-dollar bill, did you see another bill at the same time? A. I did.

Q. Do you know what its denomination was? A. No, sir.

Q. Did he say anything to you about what you might do if you needed to spend a little money? A. Yes, sir.

Q. When? A. When he handed me the five-dollar bill.

Q. What did he say about that? A. He told me to spend what I wanted.

Q. You give us the whole expression, please. A. I couldn't do it. I don't remember just the expression he made.

Q. What, if anything, did he say to you about what he had got? A. I don't think I understand.

Q. Did he say to you, "I have got the tin"? A. No, sir.

Q. To refresh your recollection and recall what he said, let me ask that again. A. He didn't say that to me at all.

Q. You testified so at the former hearing? A. No, sir; I have not.

Q. Do you recollect testifying before Judge Lyman at Shelburne Falls? A. Yes, sir.

Q. Stop and refresh your recollection, and state whether you stated there that the expression was, "I have got the tin"? A. I don't think I ever made such a statement.

Q. When he invited you to spend a part of the \$5 for yourself, did you do it? A. No, sir.

Q. What? A. No, sir.

Q. Did you state there at Shelburne Falls that you did spend 10 cents out of it for yourself? A. No, sir; not out of the five-dollar bill.

Q. Whether it was out of the other? A. It was out of the bill that I got afterwards.

Q. Did you have any other money transaction with him on Friday night? A. Yes, sir.

Q. What was it? A. He handed me a bill to get him another pint.

Q. How large was that bill? A. A one-dollar bill.

Q. Whether he said anything with reference to that bill? A. I don't know whether he said anything with reference to that, or not.

Q. Did he give you any leave to spend any part of it for yourself? A. I don't remember whether he did, or not, at that time.

Q. Did you in fact spend any part of it for yourself? A. I did.

Q. How much? A. I spent 10 cents out of it.

Q. What did you buy for him? A. A pint of whiskey.

Q. For how much? A. Fifty cents.

Q. What change did you return to him? A. I didn't return any.

Q. What did you do? A. I kept it.

Q. What, if anything, did he say about your keeping it? A. I told him I had spent 10 cents, and would keep the rest; and he said, "All right; keep it."

Q. What was done with the second pint? A. I couldn't say what was done with it; I suppose we drank it.

Q. Did you drink some of it? A. I suppose I did.

Q. Where was it used? A. I can't say just where we used it.

Mr. KNOWLTON. I can't hear you, sir.

THE WITNESS. I can't say just where we drank it.

Q. About what time did you get the second pint? A. Shortly before 11 o'clock.

Q. And whether or not, when you got that second pint, you returned to Haller's pool room? A. No, sir.

Q. Where did you go with it? A. We went down to Jenks's corner, — Jenks's shoe store, — in front of Mr. Jenks's shoe store.

Q. And who were there with you? A. There was Mr. O'Neil and Mr. Woodward. They were alone then, I think.

Q. O'Neil, Woodward and yourself? A. Yes, sir.

Q. Drink anything? A. I don't remember whether we drank there, or not. I had to go right back again to the hotel.

Q. What occasion was there for your going back to the hotel? A. Mr. Nutting stopped me just as I came out of the hotel, and wanted me to get him a half-pint of liquor, and I went right back —

Mr. BEER. We object.

Q. You went and did another errand, did you? A. Yes, sir.

Q. And then came back to that place? A. No, sir.

Q. Did you drink any after you came back? A. I didn't come back to that place.

Q. To what place did you return? A. To the bank steps.

Q. Whom did you meet at the bank steps? A. Mr. O'Neil and Mr. Woodward, and Mr. Wood joined us there.

Q. What time was it that you four were at the bank steps? A. I couldn't say what time it was.

Q. As near as you can? A. I should think 11 o'clock.

Q. What were you doing there? A. I don't remember doing anything there, only just standing there.

Q. Were you talking? A. I don't remember; there was some talk there, certainly.

Q. What, if anything, did James Wood say? A. I don't remember of his saying anything, except where he had been, — told us where he had been.

Q. What, if anything, did O'Neil say? A. O'Neil asked Wood to get another pint.

Q. What did Wood say? A. Wood said he would go and try.

Q. What did he do, if anything? A. He went and tried.

Q. Whether there was anything shown in the way of money? A. I don't remember.

Mr. BEER. We object to leading questions; it has become intolerable in this trial.

Q. Whether or not you recollect money being shown there at the bank steps? A. No, sir.

Q. Whether or not you recollect Woods being furnished with money? A. No, sir; I couldn't say whether he was furnished with it, or not.

Q. Whether or not you recollect that O'Neil took out a ten-dollar bill there, and showed it to James Wood?

Mr. BEER. We submit that merely using the word "not," and suggesting the substance, does not prevent a question being leading.

SHELDON, J. Well, you may show that he did have money, and that he showed it to Wood, if he did.

Q. Do you recollect whether O'Neil showed Wood any money? A. No, sir.

Q. Do you recollect any talk about money? A. No, sir.

Q. Do you recollect how long you stood there? A. No, sir; I couldn't say how long we stood there.

Q. Do you recollect what was the occasion of your moving away, if there was any? A. No, sir; I don't remember what started us.

Q. Do you recollect where you went from the bank steps? A. Yes, sir.

Q. And where? A. We went down street, and passed over into Buckland.

Q. How many of you went? A. Four.

Q. The same four? A. Yes, sir.

Q. And where did you go? A. We went to the depot.

Q. And when you went to the depot, what did you do? A. We went into the depot.

Q. And what occurred there? A. I don't know whether anything occurred there just then.

Q. Anything said? A. I don't remember anything being said when we first went in there.

Q. How long did you remain in there before anything was said? A. I don't remember anything being said while I was there at that time.

Q. Just what did you do next? A. I went outside.

Q. Did you return again? A. I did.

Q. Where did you go when you went outside? A. I walked down the depot platform with Mr. Wood.

Q. With whom? A. With Mr. Wood.

Q. About how long did you remain outside? A. Oh, I should think twenty minutes.

Q. And then what? A. I went back to the depot.

Q. And where was O'Neil at that time? A. He was lying on the settee.

Q. Was he doing anything? A. No, sir.

Q. What, if anything, was said when you went back at this second time? A. I asked, — when I stepped in I asked the operator what the trouble was; he said he wanted to get O'Neil out.

Q. Go on and state all that was said? A. I told him that I would get him out. He stepped away from O'Neil. O'Neil raised his head and said he wanted to go to Boston, wanted a ticket. The operator said he didn't want to go to Boston, or some such remark he made, I don't remember just what it was, and O'Neil started to lay down again.

Q. Go right along with it. A. As he was starting to lay down I understood him to say something about Baldwinville. I asked him if he wanted to go to Baldwinville, and he didn't answer me. I felt in his pocket, pulled out his ten-dollar bill, and asked him if I hadn't better keep it for him, and he told me to keep it. I showed the bill to the operator, and Mr. Murdock was there with him, and I put the bill in my own pocket. I then got O'Neil up and went outside of the depot.

Q. Then what did you and O'Neil do? A. He said he wanted to go to the engine house. I told him that I was going home. He asked me for his ten-dollar bill. I gave it to him, and then walked to the engine house with him, — with him and Mr. Woodward. We stayed there a little while, and then went home.

Q. What time did you go home? A. I couldn't tell exactly the time.

Q. With whom did you go away from the engine house? A. Went away from the engine house with Mr. Woodward.

Q. And whether or not O'Neil went with you? A. I think he did.

Q. As near as you can state, what time was it when you three men left the engine house? A. I should think it was about half-past 12.

Q. And whether Wood was there, or whether he had gone before? A. Wood wasn't there when we left, I don't think.

Q. Do you know what time he left? A. No, sir.

Q. What had you been doing from the time you first went over to the depot until this time at half-past 12? A. Why, we had been at the depot a little while, and then I had been outside with Wood some time, and then we walked down to the engine house and stayed there a little while, and then went home.

Q. How far did you and O'Neil walk together as you started from the engine house to go home? A. I don't remember; I believe that he walked up with us all the way, but I am not certain.

Q. Where do you live? A. I live in Shelburne.

Q. I mean on what street? A. On Main Street.

Q. On the Shelburne side? A. Yes, sir.

Q. And do you remember where you parted with O'Neil? A. No, sir.

Q. Did you see him Saturday morning? A. I did.

Q. When first? A. I couldn't say what time.

Q. As near as you can, will you state? A. I should think it was between 10 and 11 o'clock.

Q. And where? A. At Jenks's corner, corner of Jenks's shoe store.

Q. Whether he was alone, or in company? A. He was in company.

Q. With whom? A. Charles Woodward and John Couard was with him.

Q. Was that the first time you met him Saturday morning? A. Yes, sir.

Q. What time did you get down town? A. I don't remember what time I came down.

Q. When you met him at Jenks's shoe store it was about what time? A. I don't know what time; I should think it was between 10 and 11 o'clock.

Q. Have any talk? A. I don't remember what was said then.

Q. Had you at that time heard of the death of Mrs. McCloud? A. I had not.

Q. Did you hear him mention it at that time? A. No, sir.

Q. How long did you remain with him there at Jenks's shoe store? A. Why, we didn't stay there at all; we walked around back of Mr. Frost's livery stable from there.

Q. And going into Frost's livery stable yard, what way would you take, what direction would you go? A. We didn't go into the livery stable yard.

Q. Did not? A. No, sir.

Q. Where did you go? A. We went around back of the livery stable.

Q. And to go to the back of the livery stable, where would you go? A. Pass almost directly north, up River Street.

Q. Go up River Street and go in to the north side of the livery stable? A. We went past, around back of the fish market; and that brings you right back of the livery stable.

Q. And how many men went there? Name them. A. Charlie Woodward, John Couard, O'Neil and myself.

Q. And about what time did you get there? A. I don't know what time it was.

Q. And you stayed there about how long? A. I couldn't say; a very short time.

Q. Well, before you had got to the alley in back of Frost's livery stable, had O'Neil told you anything about the death of Mrs. McCloud? A. No, sir.

Q. Was Mrs. McCloud's death talked about all the time you were there? A. That is all I remember hearing talked about.

Q. Did you hear anybody else talk about it except those you have mentioned? A. No, sir.

Q. Who did the talking? A. I can't say; we all talked about it. Mr. Shaw told us about it, and told us where she was found.

Q. What Shaw? A. Joseph Shaw.

Q. Can you state any more fully what Joseph Shaw said? A. He told us where she was found.

Q. State what he said about it. Speak so that everybody in the room can hear you. Tell what he said. Where was she found, as he said? A. He pointed the place out to us where she was found.

Q. What did he say?

Mr. BEER. That is objected to. We submit that the witness has been asked fully upon this subject, and he has stated over and over that he cannot repeat the words that were said, and that the district attorney has been suggesting for a long time what might have been said, and it seems that it is time to terminate it.

SHELDON, J. There is nothing suggestive in this question. You may put the question.

Q. (by Mr. HAMMOND). What did he say in reference to the place where she was found? A. I don't remember what he said.

Q. Did he say she was found out doors, or in the house? A. Certainly he said she was found out doors.

Q. What did he say in reference to the place? A. I don't remember what he said.

Q. Did he say whether or not it was in the woods? A. I don't know as he used the words, to say so; he pointed the woods out to us from there; you could see them very easily.

Q. Did you go anywhere with O'Neil after that? A. No, sir; I left him there.

Q. About what time did you leave him? A. I couldn't say what time it was.

Q. How near to 12 o'clock? A. No, sir; it was a little after 11, I think.

Noon recess.

AFTERNOON SESSION.

Roll of jury called, and prisoner answered to his name.

Direct Examination of WILLIAM P. MORRISSEY—resumed.

Q. (by Mr. HAMMOND). Where did you go when you left O'Neil at Jenks's shoe store? A. I don't understand the question.

Q. Were there any other persons there in front of the shoe store?
A. Yes, sir.

Q. How many? A. I don't know how many there was; there was quite a number of people there.

Q. Who were there besides the four you have mentioned? A. I only remember of one or two.

Q. Name them. A. Mr. Avery came there.

Q. What Avery? A. Mr. John Avery.

Q. Well, go on. A. And Mr. Shaw, — Joe Shaw.

Q. Any others? A. That is all that I remember by name.

Q. Did you hear anything talked about? A. Yes; Joe Shaw came along and told us about Mrs. McCloud being murdered.

Q. What did he say? A. I don't remember just what he said; he told us they had found her up in the woods there.

Q. As nearly as you can, use Shaw's expression. A. I can't use his expression.

Q. Quote it. A. I can't do it.

Q. As nearly as you can. A. I can't say what he said, — just the expression he made.

Q. Whether he said, "Found dead up in the woods," or whether he said murdered? A. I don't remember.

Q. To the best of your recollection, state. A. I think he said she was found up in the woods.

Q. To whom did he tell that? A. I don't know who he was telling it to; he was telling it to me and Mr. O'Neil, and Woodward and Couard were there.

Q. Did O'Neil say anything? A. I don't remember.

Q. Did he make any reply? A. I don't remember.

Q. Did you hear him say anything about Mrs. McCloud? A. O'Neil?

Q. Yes. A. No, sir; I don't remember of his saying anything.

Q. Did you hear him say whether he knew her, or not? A. No, sir.

Q. Did you hear him say whether he had heard of it or not? A. No, sir.

Q. Did he say anything to the effect that he had heard it from his mother in the morning? A. Not that I remember of.

Q. Did you hear him say that he had heard it as he came down town, from the milk boy? A. Don't remember that he said anything about it.

Q. How long did you stay in that place in front of the shoe store? A. I don't know how long we stayed in front of the shoe store.

Q. To the best of your recollection. A. Perhaps fifteen or twenty minutes.

Q. Was Mrs. McCloud's death talked about all the time you were there? A. That is all I remember hearing talked about.

Q. Did you hear anybody else talk about it except those you have mentioned? A. No, sir.

Q. Who did the talking? A. I can't say; we all talked about it. Mr. Shaw told us about it, and told us where she was found.

Q. What Shaw? A. Joseph Shaw.

Q. Can you state any more fully what Joseph Shaw said? A. He told us where she was found.

Q. State what he said about it. Speak so that everybody in the room can hear you. Tell what he said. Where was she found, as he said? A. He pointed the place out to us where she was found.

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Q. Did he say she was found out doors, or in the house? A. Certainly he said she was found out doors.

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Q. Did he say whether or not it was in the woods? A. I don't know as he used the words, to say so; he pointed the woods out to us from there; you could see them very easily.

Q. Did you go anywhere with O'Neil after that? A. No, sir; I left him there.

Q. About what time did you leave him? A. I couldn't say what time it was.

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Noon recess.

AFTERNOON SESSION.

Roll of jury called, and prisoner answered to his name.

Direct Examination of WILLIAM P. MORRISSEY—resumed.

Q. (by Mr. HAMMOND). Where did you go when you left O'Neil at Jenks's shoe store? A. I don't understand the question.

Q. Where were you last with him, that you have mentioned? A. That I have mentioned?

Q. Yes. A. To-day?

Q. Yes, to-day. A. I don't remember just where I did go to.

Q. Where did you go when you came out from the rear of Frost's stable? A. Went back in front of Mr. Jenks's shoe store.

Q. How long did you stay in front of Mr. Jenks's shoe store? A. I couldn't say how long.

Q. Where did you go when you left that place? A. Went to the Shelburne Falls House.

Q. Any one go with you? A. Yes, sir.

Q. Who? A. John Couard.

Q. O'Neil go? A. No, sir.

Q. Where did O'Neil go, as far as you know? A. I don't know where he went; I left him there.

Q. What time did you next see him? A. I don't know.

Q. As near as you can give it. A. I should think between 3 and 4 o'clock.

Q. Where? A. In front of Mr. Joyce's shoe store.

Q. With whom? A. I don't remember whether any one was with him, or not.

Q. With whom was John? A. I don't know as there was any one there with him.

Q. You recollect no one, except you met John O'Neil? A. Yes, sir; I remember meeting him as I came out.

Q. At that time, 2 o'clock, whether John O'Neil had talked with you at all about the death of Mrs. McCloud? A. At 2 o'clock?

Q. Before that time, had he said anything to you about the death of Mrs. McCloud? A. He didn't state anything except what was said in front of Joyce's shoe store.

Q. Did he say anything at that time, himself? A. I don't remember.

Q. Down to 2 o'clock on Saturday, had he told you he had heard of it at 9 o'clock? A. No, sir.

Q. What were you doing when you met him at this time, between 2 and 3? A. It was between 3 and 4.

Q. What were you doing, and O'Neil doing? A. I was just coming out of Haller's pool room; as I came out from the store, he spoke to me.

Q. What happened when you and O'Neil met? A. He asked me to go and get him a pint.

Q. Did he do anything besides ask you? A. No, sir; except gave me the money to get it.

Q. State that, and state it so that all may hear you. A. He gave me the money to get it.

- Q. What did he give you? A. He gave me a ten-dollar bill.
- Q. Did he say anything about the ten-dollar bill at that time? A. I don't remember about his saying anything.
- Q. What did you do with it? A. I went and got a pint.
- Q. Where did you get it? A. At the Shelburne Falls House.
- Q. From whom? A. William Tooles.
- Q. The same one that changed the other bill? A. Yes, sir.
- Q. What did you get in exchange? A. I got \$9.50.
- Q. Did you spend any part of it besides this? A. I did not then.
- Q. Did you at any time? A. I did afterwards.
- Q. How much of it? A. I kept a dollar and a half of it.
- Q. What did you do with the pint? A. I gave it to O'Neil.
- Q. What did O'Neil do with it, so far as you saw? A. I don't know what he did do with it.
- Q. Did he treat in your presence? A. No, sir; he left me right there.
- Q. Did you see him again? A. No, sir.
- Q. Did you see him at all when he was prostrated in the alley at about 6? A. No, sir.
- Q. Did you see him again until the time he was arrested? A. No, sir.
- Q. How frequently had you seen O'Neil for the last two or three weeks before that Saturday? A. I couldn't say.
- Q. Nearly every day? A. I think so.
- Q. Had you seen him have any money in the last two or three weeks, as you had met him? A. I don't know whether I had, or not.
- Q. Did you know of his having any?
- Mr. BEER. We object to that question.
- A. No, I don't remember his having any.
- SHELDON, J. Whether he saw money?
- Q. Did you see him have any money at that time?
- Mr. KNOWLTON. He has answered it; can't remember of his having any.
- Mr. HAMMOND. You may inquire.

Cross-examination.

- Q. (by Mr. DOWLIN). What did you say your business was at the time? A. I worked in the cutlery in Shelburne Falls.
- Q. Where is the cutlery located? A. Where is the cutlery located?
- Q. Yes. A. It is located on the Buckland side, at the south end of the village.
- Q. On Conway Street? A. Yes; I believe it is on the corner of Conway Street.
- Q. Was the cutlery then running full time? A. No, sir.

Q. Were there many out of employment at that time? A. I don't understand.

Q. Were there many out of employment at that time? A. Why, I don't know whether there was, or not.

Q. Were you working steadily? A. No, sir; I was not; they wasn't running steadily.

Q. How many days in a week were you getting in at that time? A. I don't remember whether they were running three or four days.

Q. Where did you first go after you ate your supper Friday night? A. I went up street from the shop, went to Haller's pool room.

Q. About what time did you go into Haller's pool room? A. I don't know what time it was.

Q. Did you stay there right along after you first went in until you saw O'Neil? A. No, sir.

Q. What time did you leave the pool room after you first went in? A. I couldn't say what time I left the pool room.

Q. What was the object of your leaving Haller's pool-room? A. To go to supper.

Q. After the first time you went in? A. I left there to go to supper.

Q. I am inquiring as to your actions after supper. A. You asked me the first time I went in there.

Q. I asked you what your object of leaving the pool room was, and I will add to it, after supper. A. I left there to go to the post-office.

Q. How many were with you when you walked to the post-office? A. I don't know.

Q. With whom did you go to the post-office? A. I don't know; I think I went alone from the pool room.

Q. Who was in the pool room when you first went in there? A. There was Mr. Haller, Homer Cudworth and Julius Pfersick.

Q. Who else? A. There was no one else.

Q. Have you given the names of every one who was in there? A. Yes, sir; there was only those three in there when I went in there.

Q. Who came in while you were there? A. I couldn't say; there was lots of them came in there.

Q. And you are sure you have given the names of every person that was in there? A. Every person that was in the room when I first went in.

Q. Do you know who came in afterwards? A. No, I couldn't say.

Q. Speak louder. A. I know lots of them that came in there afterwards.

Q. Was Dubsey Woodward in there? A. No, sir; not then.

Q. When did he come in? A. I don't know when he came in.

Q. When did you first see him in the room? A. The first time that I noticed his being there was, I think, somewhere near 7 o'clock.

Q. How long after Dubsey Woodward came in was it that you went out to go to the post-office? A. I don't know when Dubsey Woodward came in.

Q. You just stated it was somewhere about 7 o'clock. A. I said that was the first time I noticed him being in the room.

Q. How long after you noticed him being in the room was it that you went out to go to the post-office? A. I should think a little over half an hour.

Q. How do you know it was about 7 o'clock when Dubsey Woodward came into the pool room? A. I don't know when he came in the pool room.

Q. When you saw him there? A. I don't know; I saw him there, — that is all I know; it was nearly 7 o'clock.

Q. Did you notice William Morrissey, that lives in Buckland, in the pool room? A. No, sir; I didn't.

Q. Did you notice Mr. Stemple in the pool room? A. No.

Q. Can you tell all the persons that were in the pool room just before you went out to go to the post-office? A. No, sir.

Q. Had you seen O'Neil to speak to that day before the time that you have just testified you saw him that evening? A. Not that I know of.

Q. Would you swear that he was not in the pool room before you went out to the post-office? A. No, sir.

Q. How long were you gone to the post-office? A. I couldn't say how long I was gone.

Q. What time did you get back to the pool room? A. I ain't positive what time I got back to the pool room.

Q. How long were you in the pool room, after you got back there, before O'Neil spoke to you? A. I don't know how long I was there.

Q. You have testified before on this case? A. Yes, sir.

Q. Did you ever testify as to there being any clock in the pool room before? A. I don't think I have; I have testified that I noticed the time in the pool room before.

Q. Haven't you testified before, in cross-examination, that you had no means of telling the time? A. No, sir; I don't think I have.

Q. When was the first time that you saw O'Neil that night? A. The first time that I saw him that I recollect was about twenty-five minutes of 9.

Q. Where was he when you first saw him? A. He stood in the pool room door.

Q. Which door? A. The west door.

Q. The door that opens onto the street where the railroad tracks are? A. Yes, sir.

Q. Did you hear him say anything? A. Yes, sir; I did.

Q. What was it? A. He called to the young fellow that was running the pool room, told him there was some one outside that wanted to see him; they were in a team.

Q. Did he speak to anybody else? A. I don't know whether he did or not.

Q. Did you notice any one else leave the room after his speaking at the door? A. Yes, shortly after that I did.

Q. Whom did you notice leave the room? A. Woodward, Charlie Woodward, and Mr. Haller went out with him.

Q. How long were they out before they came back? A. I don't know how long they were out, not a great while.

Q. When they came back, who came back? Did O'Neil come back with them? A. Yes, sir; he came back with them, I suppose.

Q. Did you see him come into the room with them then? A. No, sir; Mr. Haller came back first.

Q. How long after Haller came back did you notice that O'Neil came into the room? A. I couldn't say; Mr. Haller came back first, and told me that some one outside wanted to see me, and I went out there, and O'Neil was there.

Q. Which door did you go out? A. Out the east door into the coal shed.

Q. Which door did Haller go out? A. He came out the same door.

Q. Which door did you say that he went out first? A. He went out the west door first, — that is, when O'Neil, Haller and Woodward went out, the first time, they went out the west door; they came in the other door.

Q. What did you do after you went out, in response to that request? A. I went out into the shed where they were; we all drank out of a bottle they had there.

Q. How many were out there? A. Four of us.

Q. Give the names, please. A. Mr. Woodward, Mr. Haller, Mr. O'Neil and myself.

Q. How many times did you drink out of the bottle then? A. I only drank once then; I don't think any of them drank only once.

Q. Did you notice how many times the rest of them drank? A. No, sir; I would not be positive about it.

Q. How long did you stay out there that time? A. I couldn't say; not more than a minute or two.

Q. Where did you go then? A. I went back into the pool room.

Q. Who went back with you? A. They all came back in there.

Q. How long did you stay in the pool room, all of you? A. I couldn't say how long; fifteen minutes to half an hour.

Q. Then was it the first time that you were out there that you heard the remark about its being Wood's whiskey? A. Yes, sir.

Q. Did you hear Dubsey Woodward say anything about the whiskey the first time you were out there? A. No, I don't remember his saying anything about it.

Q. Who was in the pool room when you came back after the first trip? A. There was lots of people in there.

Q. How many? A. I couldn't say how many.

Q. Fifteen? A. There may have been that many.

Q. The first time that you saw O'Neil that night was at the door on the west side of the pool room? Do I understand that correctly? A. That is the first time I saw him, that I remember of.

Q. Did you get a full view of him then? A. Yes, sir.

Q. Notice anything unusual about him? A. No, sir.

Q. The second time that you went out, what was the first thing you did after you got out to the coal shed? A. The first thing we done was to take a drink, I believe.

Q. How many drinks did you have that time? A. I took one.

Q. Did you notice how many the rest took? A. No, sir.

Q. Did you take more than one drink while you were out there the second time? A. No, sir; not there.

Q. Where did you go after you left the coal shed? A. I went to the Shelburne Falls House.

Q. After more whiskey? A. Yes, sir.

Q. How many times had you drank out of the bottle before you went to the Shelburne Falls House? A. Twice.

Q. To your knowledge, how many times had the rest drank out of the bottle before you went to the Shelburne Falls House? A. I think they drank twice apiece, but I am not certain.

Q. Were you the first one to take a drink out of the bottle the first time you went out? A. I don't know whether I was, or not.

Q. Was the bottle full when it was handed to you? A. I don't remember.

Q. Do you remember, the first time that the bottle was handed to you, how much there was in it? A. No, sir.

Q. Do you remember how much there was left after you had taken your drink the first time? A. No, sir; I don't.

Q. So that it was the second time that you were out there drinking, as I understand it, that O'Neil first made any exhibition of money? A. Yes, sir; that is, the first time that I saw it.

Q. Where did you go after you came back from the Shelburne Falls House? A. I came back front of Mr. Joyce's shoe store.

Q. Drink out of that bottle of whiskey? A. I think they all drank that there, — Mr. Woodward and Mr. O'Neil and myself, and Mr. Glassett joined us there; he drank there.

Q. Was Mr. Haller out in front of Joyce's shoe store with you? A. Yes, sir; he was.

Q. So there were five that drank out of that bottle? A. I think they all drank; I wouldn't be certain about it.

Q. Where did you and O'Neil and the rest of you go after you had taken that drink in front of Joyce's shoe store? A. We walked down to the next block.

Q. In front of the Joel Thayer building? A. Yes, sir.

Q. Whereabouts did you stop there? A. We stopped right in front of the building there, on the sidewalk.

Q. What did you do there? A. Nothing in particular.

Q. Take another drink? A. I couldn't say; I don't remember whether we did, or not.

Q. Then where did you go? A. We went back to the coal shed.

Q. Back by Joyce's shoe store and up into the alleyway and up into the coal shed? A. I don't remember which way we went back.

Q. Did you go through the pool room to get in there? A. I don't remember whether we did, or not.

Q. What did you do in the coal shed? A. We drank there again.

Q. And was it then, after you drank there again, that O'Neil was taken sick? A. Yes, sir.

Q. So, to your knowledge, before O'Neil was taken sick, he had drank with you four times? A. Yes, sir; he had.

Q. What did you see him do in consequence of his statement that he was sick? A. I see him run out of the coal shed.

Q. How did he run out of the coal shed? In what position was his body? A. He was bent forward.

Q. Leaning forward? A. Yes, sir.

Q. Do you remember just how much his body was leaning forward when he started out of the coal shed? A. No, sir; I couldn't say how far he was leaned over.

Q. Well, stooped over? A. Yes, sir; he held his head forward and bent as he ran out the door.

Q. Like that [indicating]? A. Yes, sir.

Q. Are there any steps that lead up from the coal shed to the alley? A. Yes, sir.

Q. How many? A. I think there is two.

Q. Did you see him go through the door? A. I did.

Q. Did you see where he stopped? A. No, sir.

Q. What did you do after you saw him go through the door? A. I went into the pool room.

Q. When was the next time, then, that you saw O'Neil? A. I saw him right afterwards, perhaps a minute or two; he came into the pool room again.

Q. Which way did he come into the pool room? A. Came in the east door.

Q. Through the coal shed? A. Yes, sir.

Q. What did he say when he came in? A. He said he run into a building out there and hurt his head.

Q. Did he say what building? A. No, sir; I don't think he did; he said he ran into the corner of the building and hurt his head.

Q. To whom did he make that remark? A. I believe he made it to me.

Q. How far were the outbuildings or closets from the coal shed door there? A. Well, I should say perhaps twelve feet, perhaps fifteen.

Q. What did you do in consequence of the statement? A. I felt of his head as he came up to me, pulled off his —

Q. Were any others gathered round there? A. Yes, sir.

Mr. BEER. Let him finish his answer. What was the answer?

THE WITNESS. I felt of his head, and pulled off a small piece of skin, off a bruise on his head.

Q. Up to that time, how much effect had the liquor that you had drunk had on you, Mr. Morrissey? A. I couldn't say.

Q. Feeling pretty good? A. Yes, sir.

Q. Slightly intoxicated? A. I couldn't tell you what you call it.

Q. Had you ever been up to the depot called the Shelburne Falls depot prior to this night? A. Yes, sir.

Q. With any of the boys about town there? A. Yes, sir.

Q. And for what purpose did you go up there?

Mr. KNOWLTON. Wait a minute.

SHELDON, J. What consequence is that?

Mr. DOWLIN. I will let it go.

Q. With whom did you go up to the depot that night? A. I went up there with Mr. O'Neil, Mr. Wood and Mr. Woodward.

Q. Had you heard O'Neil make any statement, prior to the time that you reached the depot, of his intention to go to Boston, Baldwinville or any other place? A. No, sir.

Q. Had he in your presence made any such statement? A. No, sir.

Q. What did you go up there for? A. I don't know; I don't remember. I went there because the rest did, I suppose.

Q. Haven't you stated that you went up there with the crowd to get warm? A. Yes, sir; I have.

Q. Was that the object of your going up there that night? A. That was our object after we got up to the crossing, up on the top of the hill there; we then went to the depot to get warm.

Q. Up to the railroad crossing on Ashfield Street, you mean? A. Yes, sir.

Q. That was on the way to O'Neil's home, wasn't it? A. Yes, sir.

Q. Who went into the depot with O'Neil? A. I believe we all went in together.

Q. What was said, if anything, when you first went into the depot? A. I don't remember of anything being said.

Q. Do you know whether any tickets are sold there at the depot after the 7.17 train? A. No, sir; there isn't any.

Q. (by Mr. KNOWLTON). What is the answer? A. There isn't any tickets sold there after that.

Q. (by Mr. DOWLIN). How did you come to show the ten-dollar bill that O'Neil had in his pocket to the station agent? A. Why, I took it out of Mr. O'Neil's pocket.

Q. Didn't the operator or any one present there make any remark to the effect that you fellows didn't want to go anywhere, — you hadn't got any money? A. Yes, sir; I think he did.

Q. And was it in consequence of that statement that you took the ten-dollar bill out of O'Neil's pocket and showed it to him? A. That made me think of the ten-dollar bill, when he said that.

Q. And that the station agent, in making that statement, said to you, "It is heat that you fellows want?" A. I don't remember whether he said that, or not.

Q. Where did you go after you left the station? A. Went to the engine house.

Q. And where did you leave O'Neil that night? A. I don't remember just where I did leave him.

Q. Now, when was the first time you saw O'Neil Saturday? A. I saw him Saturday morning.

Q. What time? A. I don't know the exact time.

Q. Where was it that you saw him? A. That was near Mr. Jenks's shoe store, right in front.

Q. Was that the first place you saw O'Neil Saturday morning? A. Yes, sir.

Q. Did you see John Couard Saturday morning before you saw O'Neil? A. I did.

Q. Where did you see him? A. In the Shelburne Falls House.

Q. Did you accompany John Couard out to a place where O'Neil was, and wasn't that the first place you saw O'Neil Saturday morning? A. It was.

Q. Where was that? A. In front of Mr. Jenks's shoe store.

Q. Did you go out the rear door of the Shelburne Falls House, or the front door? A. The front door.

Q. And where did you go from Jenks's shoe store? A. Went back of Mr. Frost's livery stable.

Q. You know what time that was? A. No, sir; I couldn't place the time.

Q. Who were there, that went down there with you? A. Mr. Woodward, Mr. Couard, Mr. O'Neil and myself.

Q. How many were there after you got there? A. Four of us.

Q. Anybody else there? A. No, sir; not that I see.

Q. Did you go round to Gerry's blacksmith shop? A. No, sir.

Q. Did you see any of the party go to the blacksmith shop after you went down there? A. No, sir.

Q. How long have you known Jack O'Neil? A. I couldn't say just how long; six or eight years, perhaps.

Q. Seen him under the influence of liquor before? A. Yes, sir.

Q. When O'Neil has been under the influence of liquor, what is his custom as to moving about from place to place? A. He is generally moving.

Q. What time did you leave him on Saturday after you came back from the livery stable? A. I couldn't say; I should think it was a little after 11 o'clock.

Q. Was it nearer noon? A. No. I don't think it was.

Q. Where did you go after you left him? A. I went to the Shelburne Falls House.

Q. How long after you left him did you take your dinner? A. I didn't take my dinner that day.

Q. Didn't take dinner that day? A. No, sir.

Q. When was the last time you saw him Saturday? A. I saw him Saturday afternoon.

Q. What time? A. Between 3 and 4 o'clock.

Q. Did you see him after you gave him the pint of whiskey the last time, — after you gave him that pint of whiskey Saturday afternoon? A. No, sir.

Q. And you haven't seen him since? A. No, sir; not till after his arrest.

Re-direct Examination.

Q. (by Mr. HAMMOND). I omitted to ask you what change you got back when you paid the ten-dollar bill on Saturday? A. I got \$9.50 back.

Q. In what was it? A. Eight dollars in bills, and the rest of it in silver.

Q. What in bills? A. I am not positive what they were.

Q. What do you think, — was there a five-dollar bill in it? A. I think there was.

Q. That is all.

Re-cross-examination.

Q. (by Mr. DOWLIN). Are you sure it was O'Neil that made the statement at the depot about going to Boston and Baldwinville? A. He didn't make any statement about Baldwinville, that I am positive about; he said he wanted to go to Boston.

Q. Didn't somebody in your party say, "Let's go to Baldwinville," and O'Neil kind of raised up and said, "What is the matter with Boston?" A. No, sir; not that I heard.

Q. Not that you heard? A. No.

CHARLES L. UPTON — *sworn*.

Q. (by Mr. KNOWLTON). What is your name? A. Charles L. Upton.

Q. You are a physician? A. Yes, sir.

Q. Residence in Shelburne Falls? A. Yes, sir.

Q. Do you know John O'Neil, the defendant? A. Yes, sir.

Q. Were you called to see him during that week that the body was found? A. Yes, sir.

Q. Saturday? A. Saturday night.

Q. Saturday after the morning the body was found? A. Yes, sir.

Q. Where did you find him? A. I found him in the front room at his father's house.

Q. Was he sick? A. He was sitting in a chair before the fire.

Q. Did you find him suffering from sickness? A. Yes, sir.

Q. Describe the symptoms. A. He was sitting in a chair, rather drawn over towards the left side, hunched up in this way [showing].

Q. Describe as briefly as you can. A. He was complaining of great pain over the region of the heart, extending down to the left arm. He said he was afraid he was going to die. His pulse was very rapid, weak and irregular, about a hundred a minute. Respiration feeble, twenty-six a minute.

Q. What did you find the trouble to be? A. From the symptoms and from the account he gave I found it to be angina pectoris.

Q. He said he had been drinking more or less? A. Yes, sir.

Q. He made no reference to this matter? A. No, sir.

Q. Did you notice any odor? A. There was the odor of alcohol on his breath.

Q. Did you have any talk with him about pay? A. Yes, sir.

Q. What was it? A. He offered to pay before I had finished making my examination.

Q. What did he say? A. He said, "I want you should have your pay." And I said, "Wait till I get through examining you."

Q. Go on. A. That was all that was said. Then he offered me a five-dollar bill. I took it and gave him the change, \$4.

Q. You kept the five-dollar bill? A. Yes, sir.

Q. For some reason you took it into your head to mark that bill? A. Yes, sir.

Q. So you would know it again if you saw it? A. Yes, sir.

Q. See if that [showing] is it? A. Yes, sir.

Q. Can you read your own marks? A. I think so.

Q. You may do so. A. It is marked with my initials, "C. L. U.," in the upper figure 5, and with two small crosses in the lower figure 5.

Q. That is sufficient to identify the bill. I don't know as it is desirable to make an exhibit of it. That is all that was said about money? A. Yes, sir; as far as I remember it.

Q. He didn't say where he got it? A. No, sir.

Q. That is all that occurred at that visit? A. Except the examination of him.

Q. Just as you told about it? A. Yes, sir.

Q. That disease, angina pectoris, what is the occasion of it? A. Well, there are a good many causes that may produce it.

Q. Leading causes? A. Alcoholism, usually, or old age; emotional causes, such as fright, anger, shame,—anything of that nature.

Q. Perhaps you would say any or all of them, or either of them alone, may cause that disease? A. Yes, sir.

Q. When did you mark that bill? A. The next week after I got it.

Q. The next week? A. Yes; I can't tell the exact day; it was several days.

Cross-examination.

Q. (by Mr. BEER). Is that a dangerous disease, doctor? A. Yes, sir.

Q. There were evidences of alcoholism around there, were there not? A. Yes, sir.

Q. And you concluded, didn't you, that that was the probable cause? A. That was my opinion.

Q. In order to make your diagnosis, did you remove any garment? A. Yes, sir.

Q. Which one? A. Coat, vest and shirt and undershirt.

Q. Anything peculiar about his garments? A. Ordinary clothes.

Q. Did you notice anything peculiar about any garment? A. No, sir.

Q. Especially the shirt, did you see anything? A. No, sir.

Q. There was a question being asked you when I was engaged in talking with my associates; it may relate to this one. When was it

you marked the five-dollar bill? A. It was several days after I got it; I can't tell you the exact date.

Q. (by Mr. KNOWLTON). Did you keep it separate from the time you got it? A. I did.

Q. You heard something, some remark made by somebody, that caused you to do it? A. Yes, sir.

Mr. KNOWLTON. I don't ask the remark; that is all.

Q. (by Mr. BEER). You had other bills with you? A. That night?

Q. Please answer yes or no. A. Well, when do you mean?

Q. Between the time that you took it and the time that you marked it? A. I certainly did.

Q. When was the remark made which caused you to mark the bill?

A. Immediately after leaving the O'Neil house.

Q. That wasn't made by O'Neil, was it? Answer yes or no. A. I beg your pardon, Mr. Beer; will you repeat the first question?

Q. Who made the remark to you? Did you talk to any one about the bill at the time of marking it or near that time? A. At the time of marking it?

Q. Yes. A. Yes, sir.

Q. Wasn't it one of the detectives? A. Yes, sir.

Q. And it is by reason of what he said you marked the bill? A. That is the reason I marked the bill.

Q. (by Mr. KNOWLTON). But that is not the reason —

Mr. BEER. Wait a moment.

Mr. KNOWLTON. I thought you had got through.

Q. (by Mr. BEER). You marked the bill, you kept the bill, by reason of some remark made by some other person than O'Neil, didn't you? A. Yes, sir.

Re-direct Examination.

Q. (by Mr. KNOWLTON). And that, as you said, was immediately after leaving the house? A. Yes, sir.

Mr. KNOWLTON. That is all; unless the other side wish to detain you, you may be excused.

Mr. BEER. We know of no reason for detaining the doctor; if so, we will send for him.

DAVID DAVIS — *sworn.*

Q. (by Mr. KNOWLTON). What is your name? A. David Davis.

Q. Where is your home? A. Ashfield.

Q. You are now in the Massachusetts Reformatory? A. No, sir; I am here.

Q. That is right. You are at present under sentence to that reformatory? A. Yes, sir.

Q. From the superior court of this county? A. Yes, sir.

Q. Before you went there, were you in jail at Greenfield? A. Yes, sir.

Q. Before you were ever arrested, did you know this O'Neil, the defendant? A. I have known him.

Q. How long have you known him? A. I have known him a good while.

Q. Know him to speak to him before? A. Yes, sir; I have passed time with him.

Q. What time were you confined in jail? About when? A. In November, — last part.

Q. Were you there during January and February? A. Yes, sir.

Q. At any time while you were there, did you see O'Neil? A. Yes, sir.

Q. Do you remember when? A. Yes, sir.

Q. When was it? A. February 22.

Q. Is that a holiday? A. Yes, sir.

Q. Was any extra liberty given the prisoners on that day? A. Yes, sir.

Q. What liberty was given them on that day? A. At the work shop.

Q. Were you out there? A. Yes, sir.

Q. Was O'Neil out there? A. Yes, sir.

Q. Did you see him? A. I did.

Q. Have a talk with him? A. Yes, sir.

Q. In reference to the killing of Hattie McCloud? A. Not exactly upon that, — in the position he was placed in at the present time.

Q. Tell what he said, as fully as you remember it. A. Yes, sir. I don't know as I can give you the whole details of what was said, but I will give it the best I can. I told Mr. O'Neil I was sorry to see him in that position he was in. He said he was sorry himself. He said he was innocent of the crime he was charged of. I asked him how did he happen to get into the position he was in, and he told me the night of the murder that he went home, after being drinking considerable, and ate his supper, went out after supper, and met a fellow by the name of O'Connell, and had some more drinks, and got into this trouble. Furthermore, he said he had nothing to do with the murder case whatever, only he was with the parties.

Q. Did he say anything further? A. He didn't say nothing further in regard to it only I mistrusted from what he said — [Objected to.]

Q. You will not be allowed to say what you mistrusted. A. He didn't say anything more in regard to that case.

Q. Did he say anything about who did the choking? A. He said O'Connell done it.

Q. Did he say anything about the money? A. He said that he had \$10 of it.

Q. Of the money? A. Yes.

Q. Did he say how many there were in it? A. No, sir.

Q. Did he mention anybody else besides O'Connell? A. No, sir.

Q. Have you said all you remember? A. Yes, sir.

Q. Say anything about where he met O'Connell? A. No, sir.

Q. Did you see him again afterwards? A. Yes, sir.

Q. When was that? A. Some time afterwards.

Q. Do you remember the date? A. No, sir.

Q. Where was it? A. In the bath-house.

Q. That was where you happened to be and where he happened to be? A. Yes, sir.

Q. What was said at that time? A. I asked him how they came to arrest O'Connell, and he said they wanted him so they knew where he was.

Q. Anything more? A. No, sir; not in regard to that.

Q. Who else was present when this talk was had? A. There was a fellow that was doing time there.

Q. Do you remember his name? A. Yes, sir.

Q. Curtis? A. Curtis.

Q. Have you seen Curtis? A. No, sir.

Q. Did he say anything more in the bath-room about anybody else? A. He didn't exactly say that there was anybody else into it.

Q. Well, what was the substance of what he said about it? A. That there was a third party.

Q. Did he say anything about who he was or where he was? A. No, sir.

Q. Did he say anything about where he was? A. No, sir.

Q. Did he say anything more about the third party? A. Yes, sir.

Q. Did he say the officers knew where he was? A. Yes, sir; he said they knew where he was; if they wanted him they could get him.

Q. Who was "they," — the officers? A. I suppose so.

Q. Did he say anything further about his own condition, about being drunk, or anything of that kind? A. Yes; he said he had a number of drinks when he went out, and he was drinking and under the influence of liquor.

Q. Do you remember of his saying anything more about his being drunk? A. About his being drunk?

Q. Yes. A. No, sir.

Q. Do you remember his saying if he hadn't been drunk it wouldn't have happened? A. I think he said something in regards to that, — if he hadn't been drunk, he wouldn't have been in the position that he was placed in.

Mr. KNOWLTON. That is all.

Cross-examination.

Q. (by Mr. BEER). What is your full name? A. David Davis.

Q. Where were you born? A. Ashfield.

Q. What is your age? A. I was born in '71, April 28.

Q. What has been your business? A. My business has been a common employee at everything that I could find to do.

Q. What are your parents? A. What are they?

Q. What is your father? What does he do? A. He is dead.

Q. How long has he been dead? A. A year ago last April.

Q. What was his business? A. His business was a common laboring man, sometimes done contract work on the Fitchburg Railroad, as contractor.

Q. Did you work with your father? A. No, sir; my father was disabled, — lost both legs at North Adams, ten years ago.

Q. Oh, are you the son of Dan Davis? A. That is what I am.

Q. You say you were born in Ashfield? A. Yes, sir.

Q. When did you last reside in Ashfield? A. When I was arrested, last November.

Q. How long had you been residing there up to that time? A. About a year.

Q. You have not resided there for a year? A. Oh, I was away from there and I came back a year before that, — about a year before that.

Q. Where had you been? A. I had been in Andover, where my sister lives.

Q. For a long stay? A. Yes, sir; my folks lived there at one time.

Q. Were you there only visiting? A. No, sir; I was there working.

Q. Whom were you working for? A. I worked for Moses White; I worked for Clark, a dairy farmer; and I worked for Charles Jameson, a farmer; and for several others in the town.

Q. Where were you living before that? A. Before that I was living in Ashfield.

Q. Had you continually lived there from the time of your birth to the time a year before you were arrested? A. No, sir; I lived there from the time of my birth until my folks went to Andover, and they moved to Andover about six or seven years ago.

Q. Had you lived out of the county any time in any part of the State before going to Andover? A. No, sir.

Q. When were you arrested? A. Last November.

Q. What was the charge? A. Well, I object to that question, — I don't think it is necessary.

Q. You object to it, do you? A. Yes, sir; I don't think it is —

Q. You don't wish to tell? A. No, I don't wish to tell the whole court room.

SHELDON, J. There is no difficulty, is there, in your agreeing to all that?

Mr. KNOWLTON. The record is right here.

SHELDON, J. I understand the record is in this court.

Mr. KNOWLTON. We will concede the identity.

Q. Had you had a trial at the time you say you had an interview with the defendant? A. I had a hearing.

Q. Did you have a trial after that? A. Yes, sir.

Q. How soon after the interview did you communicate anything about what you have testified here to-day to any one? A. Not from that time up till this morning.

Q. When was it? A. Not from that time until this morning.

Q. When was this interview? A. The 22d, George Washington's birthday, of February.

Q. The 22d of February? A. Yes, sir.

Q. Where was it? A. In the Greenfield House of Correction.

Q. Who were present? A. Well, a man by the name of Curtis, myself, and I couldn't say who else.

Q. How many besides those? A. I couldn't tell you.

Q. Were there people coming in and out? A. No, sir; we was in the shop; wasn't allowed to go out; they was all walking back and forth, were talking to each other. I couldn't tell besides who there was in that crowd. The way I knowed Curtis was there, he made some remark afterwards to me.

Q. I am not asking you the reason. I asked you who was there that you recall, and I asked you whether the people were walking to and fro there. You say it was a place of freedom? A. Yes, sir.

Q. And anybody could be there, or not? A. Yes, sir.

Q. Where did they come from, to be there? A. Come from?

Q. Yes. A.. The prisoners, you mean?

Q. Yes. A. Why, from the room.

Q. Were they led there by any officials? A. Yes, sir; by the official of the House of Correction. They had the privilege of going into this room and spending the day.

Q. Did they come there handcuffed? A. No, sir.

Q. How many in all were there in there, who had the freedom of the place? A. I don't know how many there were about in there.

Q. What time of day was it? A. Somewhere 9 o'clock when we went in there, I believe.

Q. Can you tell the hour that this occurred? A. No, sir.

Q. Do you know the time that you went in there? A. No, sir; not exactly.

Q. Do you know the time when you left? A. We left at 11 o'clock in the forenoon.

Q. Were you engaged in any duty there? A. Amusing ourselves was all.

Q. What were you amusing yourselves upon or with? A. Telling stories and playing checkers, smoking.

Q. Was the defendant playing checkers with you? A. No, sir.

Q. Who was? A. Nobody.

Q. You were playing checkers alone? A. No, sir; I wasn't playing checkers. I understood you to ask —

Q. I asked you what you were amused with? A. I was amused with telling —

Q. You say you were amused with checkers? A. No, sir; with telling stories, for I am no checker player. I thought you —

Q. How many were there telling stories within your hearing? A. I didn't notice, in particular.

Q. You don't know how many were there? A. No, sir; sometimes they was playing checkers, and then they got tired and would tell stories.

Q. Were you sitting down? A. I was sitting on the bench where they bind chairs.

Q. And where was Curtis sitting or standing? A. He was on the bench.

Q. What were the others doing? A. What others?

Q. You say there was another or others there. A. I said Mr. O'Neil was there.

Q. Who else? A. I couldn't tell you who else was near us.

Q. Was there another there? Haven't you said there was another there? A. There was more there, but I can't tell their names.

Q. Where did they sit or stand? A. They was very close to us, might have been ten foot, might have been eight foot, all round us; a small shop of forty or fifty men.

Q. They could all hear what was being said? A. They could if they wasn't engaged in anything else.

Q. Well, you could hear what they were saying? A. No, sir.

Q. You couldn't hear anybody? A. I could hear those that I was engaged in conversation with.

Q. How near were you to those who were playing checkers? A. Clear across the room.

Q. Now, can you tell us how many there were in the room at the time that this defendant said anything to you, as you say he did? A. How many?

Q. Yes. A. No, I don't know how many persons was there.

Q. Give us about the number? A. I should say from forty to fifty; I may be high, but that is my opinion.

- Q. But they were all in the same room, were they? A. Yes.
- Q. What objects were there in the room besides the persons? A. What objects?
- Q. Yes. A. Besides the prisoners?
- Q. Besides the persons, the people? A. There was places to cane chairs.
- Q. You say Curtis was close by? A. Yes, sir.
- Q. You don't know whether anybody else was close by? A. I couldn't call no names that were as close as we three.
- Q. Where is Curtis? A. I don't know.
- Q. Curtis could hear what you heard? A. Yes, sir; made a remark afterwards.
- Q. Well, I am not asking, — don't volunteer anything. A. Yes, sir; all right.
- Q. Who was the first person you spoke to about this? A. A man from Boston.
- Q. What is his name? A. I don't know his name.
- Q. When was it? A. This morning.
- Q. A man from Boston? A. Yes, sir.
- Q. And don't you know who it is? A. No, sir; never saw the man before.
- Q. You never had seen him before? A. No, sir.
- Q. Is he the man who brought you here? A. No, sir; but he came here with me; a sheriff, I believe.
- Q. How many came with you? A. Him and Mr. Browning, an officer from Concord.
- Q. Do you see the man in the room now? A. Yes, sir.
- Q. Where is he? A. Mr. Browning is that man, stands up there now.
- Q. Where? That gray-headed gentleman? A. Yes, sir.
- Q. Is he the man you refer to? A. He is the man that brought me up here.
- Q. Is the man in the room to whom you first told this story? A. Yes, sir.
- Q. Where is he? A. It is the second man standing up over there. Mr. KNOWLTON. Stand up, Mr. Rhodes.
- Q. He was the man that you first spoke to, was he? A. Yes, sir.
- Q. What is his name? A. I don't know.
- Q. Do you know where that man came from? A. That man over there?
- Q. Yes. A. I believe he came from Boston.
- Q. When did you tell him? A. This morning.
- Q. Where was it? A. Down there; he asked me —
- Q. Down where? A. Down to Concord.

Q. That man whom you have pointed out was at Concord this morning, was he? A. Was what?

Q. Was that man, whose name is Mr. Rhodes, it seems,—was Mr. Rhodes at Concord this morning when you told him? A. Yes, sir.

Q. Do you know where he came from in order to get to Concord? A. Boston, I believe he told me.

Q. And he was the very first man that you ever lisped a word to about this matter, was he? A. Yes, sir.

Q. Who else have you mentioned it to? A. Nobody.

Q. You have not spoken about this matter until this morning? A. No, sir.

Q. You have not spoken about it since this morning until now; is that it? A. I have not spoke about it from the time until this morning.

Q. Where were you sitting, as to the room, when you and the defendant had this conversation? A. In the House of Correction, on the binding bench.

Q. Where they make chair bottoms? A. No, sir; where they bind them.

Q. Had you been working in there? A. I had been working in the shop.

Q. While awaiting trial? A. Yes, sir.

Q. How many days had you been working in the shop? A. I cannot tell you; I was sick some, and didn't work all the time.

Q. You say you were working there while awaiting trial? A. Yes, sir; I worked some while awaiting trial.

Q. Was not that out of the ordinary? A. I believe not; they made me work, and I had to work, I suppose.

Q. Were you undergoing any sentence? A. No, sir.

Q. What part of the room was it, as to the points of the compass, that you were standing or sitting when this conversation commenced? A. I cannot tell east and west from north and south when I am in that room up there, because I was never up to the place before until I was taken up there; but it was on the left-hand side of the room, as you go through the door.

Q. From the corridor? A. As you went through the door from the guard room to the work shop, it was in the opposite corner.

Q. And on the left-hand side? A. Yes, sir,—same as you come in here [indicating door at witness left], and right across in that corner [indicating].

Q. Where have you seen the defendant before you saw him in the jail? A. Shelburne Falls.

Q. Had you lived in Shelburne Falls? A. No, sir.

Q. When were you in Shelburne Falls? A. I have been there more or less all my life.

Q. But you have been up to Ashfield, you say? A. Yes, sir; but my father used to drive team some to Shelburne Falls, with wood, and I have been there with him.

Q. Have you had any business dealings with the defendant? A. No, sir.

Q. Have you ever worked on the railroad? A. No, sir.

Q. Have you ever worked with him? A. No, sir.

Q. Have you ever drunk with him? A. No, sir.

Q. Have you ever played any games before this time in the prison with him? A. No, sir; never played any games with him.

Q. Ever at his house? A. Know where it is.

Q. Ever at his house with him? A. Never was in it.

Q. Have you been in any building with him in Shelburne Falls? A. No, sir.

Q. On what street were you at Shelburne Falls with him? A. I was not on any street with him.

Q. Where were you in Shelburne Falls with him? A. I was not with him in Shelburne Falls at all, — was not with him.

Q. You never saw him in Shelburne Falls? A. Yes, sir.

Q. Where was it? A. I have seen him a number of times in Shelburne Falls.

Q. Where was it any one time? A. I saw him on the Buckland side one time, and saw him on the Shelburne Falls side one time.

Q. What was he doing? A. Walking along the street.

Q. With whom? A. I cannot say whether anybody was with him or whether there was not.

Q. When was the first time you saw him on the Buckland side? A. Well, it was a good many years ago.

Q. When was it you saw him on the Shelburne Falls side? A. A good many years ago.

Q. When was the last time you saw him in Shelburne Falls or in Buckland? A. Number of years ago.

Q. How old was he? A. I don't know his age.

Q. How old were you? A. I can't tell exactly.

Q. How many years ago was it? A. I can't tell exactly.

Q. Can you guess? A. Yes, sir.

Q. How many? A. I should say twelve to sixteen.

Q. Sixteen years ago. You are twenty-six now? A. Yes, sir.

Q. When you were about fourteen years of age, was it, you saw John O'Neil? A. I was small.

Q. In Buckland or Shelburne Falls? A. Yes, sir.

Q. What did you say to him? A. Nothing.

Q. What did he say to you? A. He said nothing to me.

Q. Had you seen him any place else? A. No place only Shelburne Falls.

Q. And that was the last time you ever saw him, twelve years ago? A. No, sir.

Q. Where did you see him any other time? A. I see him now.

Q. Where before you saw him in jail, you understand me, have you seen Jack O'Neil? A. I hadn't seen him since that time till I saw him in prison.

Q. Where did you see him in this room that you have described, before that day, from the time that you saw him at Buckland or Shelburne Falls? A. In the House of Correction.

Q. Whereabouts? A. I saw him in the guard room and saw him in the work shop.

Q. Whom was he with in the work shop? A. He was in there amongst the rest of them.

Q. Whom was he with in the guard room? A. I don't know the gentlemen. I understood they was two North Adams gentlemen.

Q. In the guard room did you have any talk with him? A. No, sir.

Q. When, in the work shop before the time you have described, did you have any talk with him? A. Only on this holiday.

Q. How far were you when you hollered at him? A. I was as far as from here to that desk, through the door.

Q. Was there any other time that you had seen him except in those three places after you were in the House of Correction? A. Yes, sir.

Q. When? A. I saw him across from the House of Correction side to the jail side.

Q. Did you have any talk with him till you had that talk with him in the work shop? A. Yes, sir.

Q. And you say he confided to you then all that you have said, do you? A. Yes, sir.

Q. Upon that occasion? A. Yes, sir.

Q. You hadn't seen him to talk with him, and never had talked with him for twelve years, is that it? A. That is it.

Q. Until that time? A. That is it.

Q. And he told you all you say that he did, that you have stated? A. He did.

Q. Upon that acquaintance? A. I don't know about his acquaintance, but on my acquaintance.

Q. On the acquaintance that you have described? A. Yes, sir.

Q. Now, what did he say to you, the first thing he said? A. The first words he said to me, he asked me if I was Dan Davis's boy. I told him that I was.

Q. Now, go on and tell all and every word he said; say what he said. A. I don't know as I can tell every word, but I will tell it as near as I can. After we got engaged in conversation that day, he asked me if my father didn't use to board at his mother's. I said he did when he worked on the Fitchburg railroad. "Well," I says, "Jack, I am sorry to see you in the position you are in." He said it was no fault of his, in one sense of the word, and he thought he could prove himself innocent. I told him I hoped he could, and get out of it. I says, "You ought to have known better than to get into that trouble." He told me about going home that evening after drinking, eating his supper, and he said he went out and commenced to drink again, and told about meeting O'Connell, and they had a few more drinks after that, and he didn't say how he came to be where he was. He said he was an innocent man. He said O'Connell done the choking, and he said he was innocent of the murder.

Q. That was just as he said it? A. As near as I can relate it.

Q. Have you got through? A. No, I can tell some more.

Q. Proceed and tell all of it. A. He said he had got \$10, and that was all he was wound up in it, was for having that bill; and if he hadn't been drinking he wouldn't have got into that trouble.

Q. Now, have you stated all that was said? A. I think I have.

Q. Don't use any thinking, but use your knowledge as to this. A. Well, I use my knowledge to my best ability. I haven't thought on this subject since that time, and I can't tell it word for word, and you can't expect it.

Q. You haven't thought of it since then? A. I haven't thought of it till this morning.

Q. Now, he started off by saying, "I am an innocent man,—I am innocent of this"? A. Yes, sir.

Q. Then you said right off, "You ought not to have got into this thing?" A. Yes, sir.

Q. "You ought to have known better than to have got into this thing?" A. Yes, sir.

Q. And this was just after he had stated to you, "I am innocent of this"? A. That didn't make any difference; he wasn't out of it; he was in it all the same.

Q. What did you mean when you said that he ought to have known better than to have got into this trouble? A. The expression of my mind was that he ought to have known better than to have got into trouble.

Q. I am merely asking you whether that is what you said? A. Yes, sir; that is what I said.

Q. And that was the order of saying, wasn't it? A. It wasn't my meaning the same as you —

Q. Well, was it the order of your saying, — as you have stated it?
A. Yes, sir.

Q. And you have stated all parts in their natural order, have you?
A. Yes, sir.

Q. And you have stated all that was said, have you? A. As near as I can, of my ability.

Q. What time this morning did you tell Mr. Rhodes this? A. I think it was about 7 o'clock.

Q. How came you to tell him? A. He come to see me, and asked me if I knew anything about it.

Q. About what? A. About this, — this case, what was said up there.

Q. And he came to you about 7 o'clock this morning, did he? A. I think it was about 7 when he got there.

Q. Were you abed? A. I had just got up.

Q. Where was it you were? A. I had just got up.

Q. Where were you residing? A. In the hospital.

Q. Didn't you have some talk before you were tried about any matter connected with this case with the jail officers? A. No, sir; don't think I did; only I told them I thought O'Neil was innocent. I might have told them that; that is all I said.

Q. You did tell them that? A. I won't say whether I did, or not; I might have told them that.

Q. You are a truth-telling man?

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. You need not answer that question.

Mr. BEER. It is presumed that you tell the truth.

Mr. PARKHURST. That is all.

WALTER CURTIS — *sworn*.

Q. (by Mr. KNOWLTON). Your name is Walter Curtis? A. Yes, sir.

Q. Where do you live? A. I live in Deerfield when I am there.

Q. Are you living there now? A. Yes, sir; at present, through haying.

Q. You were summoned to court this morning? A. Yes, sir.

Q. You were in jail, or in the House of Correction, last February?
A. Yes, sir.

Q. Did you see Mr. O'Neil there? A. Yes, sir; I did.

Q. Do you remember also seeing the man who just went out, — perhaps you met him, Mr. — A. Davis?

Q. Yes. A. I have seen him there.

Q. Do you remember the 22d of February, a holiday? A. Yes, sir; I believe I do.

Q. Do you remember of being there and hearing any talk by Mr. O'Neil at that time? A. I had a little; nothing very serious.

Q. Tell us what you did hear? A. Well, I was going by one time when Mr. O'Neil was talking with Mr. Schenck, and I went by; I was going to light my pipe, and I heard Mr. O'Neil say that he didn't see on any ground, which the case was as far as he knew, of his getting convicted.

Q. Anything else? A. No, sir; that is all I heard him say, sir.

Q. Did you hear him at any other time? A. No, sir; because I had no conversation with him, or didn't have any with him then, only just as I passed him going into the shop.

Q. Did you hear him talk any other time? A. Well, I have heard him talk with the rest of the boys.

Q. Did you hear him talk about this case? A. No, sir.

Q. Do you remember being in the work shop on the 22d and hearing anything said by him there, — I don't care whether it was to you or to whom it was? A. No, sir; only just what I have said.

Q. Who subpoenaed you this morning, — Mr. Smead? A. Yes, sir.

Q. Did you tell him what O'Neil said? A. I told him, but it wasn't the truth, because I wasn't under any obligation of telling the truth at that time.

Q. Did you tell Mr. Smead this morning that O'Neil said in your presence, and in the presence of Davis and Schenck, that he didn't see how they could convict him of murder? A. I don't know whether I told him that exactly, or not; I don't remember exactly that I spoke those words.

Q. This morning, to Mr. Smead? A. That is what I am speaking about.

Q. Did you tell him that, and also that O'Neil said that Billy choked her, while he did the rest? A. Why, yes, sir; I told him so.

Q. You told Mr. Smead so? A. Yes, sir; I did.

Q. This morning? A. Yes, sir.

Q. How come you to tell him so? A. Why, Mr. Hawkes told me to tell him what I had said up in the lot, and of course I did so, but I didn't —

Q. Now, you are on oath, — what you told Mr. Smead, was that true, or a lie? A. Well, I didn't hear Mr. O'Neil speak those words only just in the words that he said he didn't see how they could convict him.

Q. You said you told Mr. Smead. Was it driving up that you said that? A. Mr. Smead?

Q. Yes. A. No, sir; I drove my own horse.

Q. Was it when he subpoenaed you? A. It was when he came to my house.

Q. Now, you say that you told him that O'Neil said that they couldn't convict him, because Billy choked the woman? A. I told him that he said he didn't see how they could convict him.

Q. Did you tell Mr. Smead that O'Neil said that they couldn't convict him, because Billy choked her, while he did the rest? A. I don't think I said anything about convicting, to Mr. Smead, although I might have.

Q. Do you remember whether you said that this morning to Mr. Smead, or not? A. No, sir; I don't remember telling Mr. Smead that he said that he didn't see how he could be convicted; and I might have told him.

Q. If you told him so, was it so? A. As I told you before —

Q. No; if you told him that Mr. O'Neil said that Billy choked her, and he did the rest, was it true? A. I told you it wasn't, — not then.

Q. Do you know Mr. Richard Talbot? A. I don't know him; no, I don't know that name.

Q. A man that works for Mr. Hawkes? A. Oh, yes, sir; I didn't know what his name was.

Q. Did you talk with him about this matter? A. I never talked with him only just when I was talking with Mr. Hawkes.

Q. When was that? A. That was yesterday.

Q. Now, did you tell him that O'Neil told you he would be willing to take ten years, for if he went into court he would get twenty-five? A. No, sir.

Q. Did you tell that to Talbot? A. No, sir; Mr. O'Neil's name was not mentioned on any business of that kind.

Q. No; did you ever say anything of that kind to Mr. Talbot? A. I told it right front of Mr. Hawkes, that Mr. — I can't think of his name now —

Q. O'Neil? A. No, sir; another gentleman that comes from Charlemont, if I am not mistaken; and he said that that gentleman said that he would be willing to take ten years in place of going to court, and I can't think of his name now, but I have seen the gentleman. He is a kind of a harelipped gentleman, that was put in there waiting for trial.

Q. Now, did you tell Mr. Talbot, or Mr. Hawkes in Mr. Talbot's presence yesterday, that O'Neil said in jail that it was O'Connell who choked her, and that O'Connell saw the money changed, and put him up to it, — did you tell that? A. I didn't say nothing about changing money.

Q. Did you say anything about, — let us take one thing at a time. Did you tell Mr. Talbot that O'Neil told you that it was O'Connell who choked her? A. No, sir; never told Mr. Talbot any more than I told Hawkes that —

Q. Did you tell either of them? A. I did.

Q. Was it true? A. No, sir.

Q. You were not then subpoenaed to court, were you? A. No, sir.

Q. This was a talk to your neighbors and friends there? A. They was all the time hampering me about Mr. O'Neil's case, and I have told them before that I didn't know nothing, and they kept at me, and I told them that to stop their noise.

Q. You told them that, — that O'Neil said that O'Connell choked her. Did you tell them, or say that O'Neil said that it was O'Connell who saw the money changed? A. I don't remember as I told O'Connell saw any money.

Q. Do you remember saying that O'Neil got part of the money? A. No, sir.

Q. You didn't say that? A. No, sir; all I said was what we heard, — and Mr. O'Neil didn't say it, either, — that Mr. O'Connell went up to him —

Q. I haven't asked you anything, sir, now. Did you say afterwards to Mr. Smead that you wasn't going to say anything about the — A. Yes; I told him I didn't want to say nothing about the case.

Q. Didn't you tell him you were not going to? A. Yes; but of course a man has to when he gets into court.

Q. That is, having told him first what O'Neil told you, that wrong story about what O'Neil told you, afterwards you said you were not going to say anything about it? A. Yes.

Cross-examination.

Q. (by Mr. PARKHURST). Mr. Curtis, notwithstanding anything that you have stated to anybody else, as a matter of fact, did Mr. O'Neil ever say in your presence that he had anything to do with the killing of Mrs. McCloud? A. No, sir; all that I ever heard him say was — he was talking with Mr. Schenck or leaning against one of the benches where we cane chairs — he was talking, — well, they wasn't talking very loud, and I was going by, and after he got through his statement, he says to Mr. Schenck, he says, "I don't see how they can convict me." And Richard Schenck, — and the way it was, anyway he said he didn't see himself; but as far as my hearing his conversation, I didn't, because I wasn't near him.

Q. That is all you have ever heard O'Neil say about this case? A. Yes, sir; I never —

Q. Well, just answer my question now. You realize now that you are under oath to tell the truth? A. Yes, sir; I do.

DAVID DAVIS — *recalled.*

Q. (by Mr. KNOWLTON). Mr. Davis, have you given all the conversation that you heard, or all the things that you heard O'Neil say?

A. No, not all I heard him say.

Q. Did you understand my question to refer to what he said to you? A. Yes, sir.

Q. Then I made a mistake. Did you hear him say anything to anybody else? A. Yes, sir.

Q. To whom? A. Curtis.

Q. Was that the same day? A. Yes, sir.

Q. What did you hear? A. I heard him say that he would take ten years and get out of it; or he would rather take ten years and get out of it, or something similar. I overheard that with Curtis.

Q. Anything more? A. He was afraid he would get twenty-five.

Q. Anything else did you hear him say? A. No, sir.

Q. Was that Curtis the same man you met just now? A. I have not met him.

Q. You didn't? Was there anything else you heard him say? A. Mr. O'Neil?

Q. Yes. A. No, sir.

Mr. KNOWLTON. I am asked by the defendant to have the witness last on the stand held during the rest of the trial, and shall be glad to do so. Only he is here on *habeas corpus*. Whether any order is necessary that he should be held here, I don't know. If one is necessary to be made, I ask that an order be made detaining him during the progress of the trial.

MASON, C. J. Some order for his return?

Mr. BEER. I understood it, at the request of the defence something was to be done.

Mr. KNOWLTON. You asked me to have him stay here, — or Mr. Parkhurst did.

Mr. PARKHURST. I did.

MASON, C. J. He may be retained until some order is made.

Mr. KNOWLTON. I am also asked to have this last witness remain. He is here on *subpœna*. I ought not to be responsible for his staying unless he is ordered to recognize. If you will take the chances of his staying, I will. I don't want you to blame me for his departure, if he happens to go off. Notify Mr. Curtis not to go.

WILLIAM H. TOOLES — *sworn.*

Q. (by Mr. HAMMOND). How were you employed in January last, first week in January? A. I was bartender at the Shelburne Falls House.

Q. You know William P. Morrissey? A. Yes, sir.

Q. Whether or not he came into the room where you were tending bar on the evening of Friday, January 8? A. He did.

Q. Whether in the purchase of something he tendered to you a five-dollar bill on that evening? A. He did.

Q. Do you recollect what he bought? A. He bought a pint of liquor.

Q. You recollect what you gave him back in change? A. I do not.

Q. Recollect its amount? A. Four dollars and a half.

Q. Whether or not on the afternoon of Saturday he made a purchase of you, and, if so, do you recollect what he tendered in payment? A. He did.

Q. What? A. He gave me a ten-dollar bill.

Q. What did you tender back in change? A. I couldn't say just how much I did give him back. I don't remember what he bought, —just the amount.

Q. What part of the \$10, so far as you recollect, did his purchase cover? A. Well, it was less than \$1.

Q. In what denomination did you give back the change? A. I could not tell what bills; probably be a five, and others in small bills.

[Cross-examination waived.]

ADOLPH J. HALLER — *sworn*.

Q. (by Mr. HAMMOND). Your name is Adolph J. Haller? A. Yes, sir.

Q. You live in Shelburne Falls? A. I do.

Q. Which side? A. Buckland.

Q. What was your business in the early part of January last? A. Forging.

Q. Whether or not you were in a place called Haller's pool room on any part of Friday, January 8? A. Yes, sir.

Q. When? A. About ten minutes to 7.

Q. How long did you remain there? A. Until five minutes of 8.

Q. And whether you were there again at any later time? A. I was.

Q. When? A. About two minutes after 8.

Q. And from that time how long did you remain? A. Until twenty-five minutes past 8.

Q. And then where did you go? A. Went outside.

Q. And then did you return? A. I did.

Q. And how late was the latest that you remained at the pool room? A. I left there at 10 o'clock and went home.

Q. Whether or not you saw John O'Neil that evening? A. I did.

Q. When first? A. About twenty-five minutes past 8.

Q. Where? A. Right at the door; he called me out.

Q. What did he say? A. He asked me to come out a minute.

Q. Give the whole talk. A. Well, he called me out, and we went out to the corner, and he asked if I wanted a drink. I told him I did.

Q. Go on. A. Walked up in front of Joyce's.

Q. Who were there? A. Charles Woodward and myself.

Q. Did you have a drink? A. I did.

Q. Whether or not he said anything to you about whose liquor it was? A. Not that I remember.

Q. Then or at a later time? A. Not that I remember.

Q. Go on; state what you did with O'Neil. A. We stood there.

Q. After you stood there, what did you do? A. Went around the alley.

Q. Then what? A. Called out Billy Morrissey.

Q. Then what? A. Then we finished the pint.

Q. At that time do you recollect his remarking as to the ownership of the pint? A. No, sir; I do not.

Q. State all that occurred; tell all that happened and was said when O'Neil was there with you. A. He pulled out some money, offered to pay me some money.

Q. State how much. A. Ten-dollar bill.

Q. Tell how much he offered to pay you. A. He offered to pay me 75 cents.

Q. State what he said. A. He said "Here is a dollar I owe you." I told him it was not but 75 cents. So I looked the bill over, and saw it was a ten-dollar bill. I handed it back, and he said he made a mistake.

Q. Go on. A. That is all about the ten-dollar bill.

Q. What did he do with the bill he had? A. Put it in his pocket.

Q. Whether at the same time you saw another bill? A. I saw another bill later on.

Q. What was the other one? A. I couldn't tell.

Q. Where were you when you saw him have two bills at once? A. I didn't see him have but one bill.

Q. Where were you when you saw him have another bill? A. Out to the corner of Joyce's store

Q. What did you see him have there? A. I couldn't tell you; I wasn't close enough to him.

Q. How much, in fact, did O'Neil owe you? A. Seventy-five cents.

Q. How much, in fact, did he offer to pay you? Q. He offered to pay me \$1.

Q. And what did you say to that? A. I told him he didn't owe me but 75 cents.

Q. What did he say? A. He said, "That is all right; take that." He said, "That is close enough."

Q. Did you get it at that time? A. I did after Billy Morrissey returned from the Shelburne Falls House.

Q. Did you know of his going over there? A. Yes, sir.

Q. Did you know of his bringing the change back again? A. I do.

Q. Then what did you get? A. I got a dollar bill.

Q. Did you remain with O'Neil after you got your dollar bill? A. A few minutes.

Q. Where? A. Right at the corner.

Q. Did you go in the pool room with him? A. I did not.

Q. See him again after that? A. I did.

Q. Where? A. Pool room.

Q. What hour? A. I should say about ten minutes of 10.

Q. What was he doing then? A. Not anything; simply standing there.

Cross-examination.

Q. (by Mr. DOWLIN). Where do you live? A. Shelburne Falls.

Q. On the Shelburne side, or the Buckland side? A. Buckland side.

Q. Whereabouts? A. Conway Street.

Q. How far below the cutlery factory? A. A quarter of a mile, I should say, more or less.

Q. Did you see O'Neil Friday afternoon? A. I did not.

Q. Where were you Friday afternoon? A. Working.

Q. What time did you get through work? A. Four o'clock.

Q. Where did you go after you got through work? A. Went home.

Q. What did you do after you got home? A. Hitched up my horse to ride.

Q. Where did you go for a drive? A. Towards Conway.

Q. What time, now, did you get back home? A. I should say about quarter-past 5.

Q. Did you meet any relatives of yours that evening about 6 o'clock? A. I did.

Q. Well, who was it? A. Johnnie Haller.

Q. Where was he stopping? A. At his folks'.

Q. Where do his folks live? A. Right across the road from my house.

Q. Where did you go with Johnnie Haller? A. Went up to the pool room.

Q. What time was that? A. We left his house about twenty-five minutes of 7.

Q. What time did you get to the pool room? A. Ten minutes of 7.

Q. Who was in the pool room when you got there? A. Charles Woodward, William Morrissey, William Shaw.

Q. Who else? A. Well, there was more, I couldn't think of the rest of them; Eddie Haller.

Q. Was Joyce in there, Eddie Joyce? A. I don't remember of seeing him.

Q. Did you see Louis Rice there? A. I did later on.

Q. Was he there when you left there? A. I don't remember of seeing him there.

Q. Was there a game of pool going on when you went there? A. Not that I remember of.

Q. What was your object in going to the pool room? A. I generally take up my cousin's supper.

Q. Did you have his supper with you that night? A. I did.

Q. Do you remember meeting any one between the cutlery factory and the Shelburne side of the river? A. I do.

Q. Who? A. Charles Williams.

Q. Who else did you meet? A. That is the only one that I remember meeting.

Q. Did you see any lady? A. I did not, — not that I remember.

Q. When you came up Conway Street from your home, looking at the plan here, of course you came so that you could see Ward's corner very plainly; passed right by it, didn't you? A. Yes, sir, — no, I didn't; I was the opposite side of the street.

Q. Well, on the opposite side of the street, you passed right by Ward's corner? A. I did.

Q. Did you notice any one standing on Ward's corner when you passed by with your cousin? A. I did not; I don't remember of looking that way.

Q. Were you, or your cousin, carrying the supper? A. My cousin.

Q. Now, do you remember just what position you were walking in as to your cousin when you turned from Conway Street onto the State road, whether you were the nearest to Ward's corner, or your cousin was the nearest to Ward's corner? A. I do.

Q. How was it? A. I was the nearest to Ward's corner.

Q. Your cousin was on the river side? A. He was.

Q. Do you remember meeting any one in front of March's barber shop, right by the electric car tracks? A. I do not.

Q. Do you remember whether your cousin spoke to any one there, or not? A. I do not.

Q. Do you remember whether either of you spoke to any one there,

or not? A. I remember I didn't; I didn't hear him speak to any one.

Q. Do you remember, as you turned off from Conway Street to the State road, of seeing any one coming down Ashfield Street, down Depot hill? A. I did not; I don't remember of seeing any one.

Q. Did you look to see whether any one was coming down the hill there at that time? A. I did not.

Q. Were you up to the Woodward House on Thursday night? A. I was.

Q. Was O'Neil there? A. He was.

Q. Did O'Neil loan you his pipe there at the Woodward House? A. He did not.

Q. Did you loan O'Neil your pipe? A. I did.

Q. What time in the evening was that? A. Some time after 8 o'clock on Thursday evening.

Q. Now, what did O'Neil say to you when he showed some money there that night? A. In the pool room?

Q. Yes, sir. A. He says, "Here is a dollar I owe you," and handed me a bill; I looked at it.

Q. Did he say anything else besides "Here is a dollar that I owe you," in connection with that debt? A. I thought he said, "Here is a dollar I owe you; I have owed you quite a while."

Q. What did you say? A. I said it was all right; he was not obliged to pay me now. I said I was not in need of it.

Q. Did you make any remark about its being 75 cents? A. I did.

Q. What did he say? A. "Here is a dollar, and that is close enough."

Q. Did he say, "I borrowed 25 cents more of you?" A. Not that I remember.

Q. If William Morrissey testified that way, he was mistaken, then? [Objected to.]

SHELDON, J. The witness is not the judge of that.

Q. (by Mr. DOWLIN). You don't remember hearing it? A. No.

Q. How many times had you drank with O'Neil when he offered you this money? A. Twice.

Q. Hadn't you drank with him the third time before he offered it? A. I had not.

Q. Did you drink with him on the west side of the pool room? A. I did once.

Q. That was before William Morrissey met you? A. It was.

Q. You drank with him once with Morrissey on the east side of the pool room? A. I did not.

Q. Didn't you go out there with him then? A. I was out there when Morrissey came out.

Q. Was it the first or second time that Morrissey was out there that he offered you this money? A. The first time.

Q. You are sure of that? A. I am.

Q. That is all.

CLARENCE B. COVELL — *sworn*.

Q. (by Mr. HAMMOND). Your full name is Clarence B. Covell? A. Yes, sir.

Q. And you are a clerk in the Shelburne Falls National Bank? A. Yes, sir.

Q. Were you so on Friday, January 8? A. Yes, sir.

Q. What place did you hold, — teller? A. Teller; yes, sir.

Q. Whether or not you recollect going into the banking room on the evening of that day? A. I do.

Q. What occasion did you have to go in there in the evening? A. I sleep there nights.

Q. And what hour in the evening did you go in? A. About ten minutes of 11, possibly a quarter of, — about that.

Q. Do you recall seeing John O'Neil? A. I do.

Q. Any one with him? A. A couple of gentlemen, — Mr. Woodward, Dubsey, they call him, and Mr. Morrissey, William.

Q. Whether there was any other party part of the time? A. There was part of the time, not when I went in.

Q. Now, state your own observation. Tell the whole story, without any prompting. A. As I reached the steps, Mr. O'Neil asked me for a match, which I gave him. I then passed into the building, locked the door, and sat down in the window seat, partly closing the window blinds. The three gentlemen, — Mr. O'Neil leaned against the steps, Mr. Woodward was directly under the window, and Mr. Morrissey was a little at his left under the window. They soon passed a bottle. Mr. O'Neil took a bottle from his pocket and passed it to Mr. Woodward, who drank from it. It was then passed to Mr. Morrissey, who took the bottle, stepped to the left out of my sight for a moment, came back, and passed the bottle back to Mr. O'Neil. Soon after this, Mr. Wood, a stranger to me, I didn't know him, came along.

Q. Have you since learned it was James Wood? A. I have since learned it was James Wood. I didn't know him. He came along. They all spoke to him, I think, and he stopped and leaned against the step. Mr. O'Neil took the bottle, passed it to him, and asked him if he would fill it. I don't know what the reply was. He returned the bottle at that time. Then some one, I think Mr. Morrissey, told Mr. Wood that Jack had hurt his head. Jack then turned and asked this strange gentleman, who I suppose was Mr. Wood, to feel the bump on his head, — bump or gash. Mr. Wood did so, and asked

the question either when or where he received it. I don't know whether it was when or where, and the reply was, "Awhile back; a while ago." The bottle was then passed to Mr. Wood again, and a bill passed. Mr. O'Neil passed Mr. Wood a bill.

Q. Did you see the size of the bill? A. The bill was a ten-dollar bill, and Mr. O'Neil said it was a two. Mr. Wood said it was a ten-dollar bill. He passed it to Mr. Wood under the window, where I could see that it was a ten-dollar bill. Mr. Wood then took the bill and held it away from the bank and said, "It is a ten," and passed it back to Jack. Jack then took another bill—I suppose a bill, he said a bill—from his pocket. It was a crumpled paper that looked like a bill. He passed it to Mr. Wood; he said, "This is a two." Jack says, "If it isn't a two, I have one." Mr. Wood then started towards the hotel. I left the window seat to go round behind where my coat was kept, and hung up my coat and hat. I noticed as I left the seat that the lights in the pool room in the hotel were lighted. It could not have been half a minute before I came back, and the lights were out in the pool room. Mr. Woodward was just passing the bank,—the night watchman. Mr. Dubsey Woodward and Mr. Morrissey were going down street. I suppose Mr. O'Neil was with them, but I didn't see him going down. That was all.

Q. Did you hear any fragments of sentences beyond those that you have given? A. I heard the word "she" mentioned more than once; I don't know in what reference.

Q. You could not gather the connection? A. No, sir.

Mr. BEER. We object to any fragments of sentences being given here.

Mr. HAMMOND. That is all. There is nothing further. I think it is competent as a part of the whole transaction.

SHELDON, J. Well, I understood the objection was to further conversation. There is no request made to strike out what has been said.

Mr. BEER. I ask that the fragments called out—

SHELDON, J. I think the witness's single statement that he heard the word "she" mentioned is competent.

Mr. KNOWLTON. Having also said that that is all he heard of that sentence.

SHELDON, J. Certainly.

Mr. BEER. We do not wish to ask any questions.

Mr. HAMMOND. That is all.

CHARLES WOODWARD—*sworn*.

Q. (by Mr. HAMMOND). Your name is Charles Woodward? A. Yes, sir.

Q. You live in Shelburne Falls? A. I live in Buckland.

Q. How long have you lived there? A. I was born in Buckland.

Q. Are you the person whom your associates sometimes called "Dubsey"? A. Yes, sir.

Q. Do you know John O'Neil? A. I do.

Q. Were you employed in any work yourself in December and January last? A. I think not.

Q. How frequently were you accustomed to seeing John O'Neil in the three weeks preceding the time of his arrest? A. Oh, most every day.

Q. And where did you see him? A. Most anywhere around town.

Q. Do you recollect whether you saw him on Friday, January 8?
A. Friday, January 8?

Q. Yes. A. I saw him in the evening.

Q. Where did you see him in that evening? A. Coming out of the pool room.

Q. What time did you first see him at the pool room? A. Why, I should say from 8 to quarter-past 8.

Q. State now what you saw, and what happened first; state all about it. A. He called Eddie Haller out first, and said there was a—

Q. State where he was. Where was he? A. Where was O'Neil?

Q. Yes, sir. A. On the steps.

Q. Which side of the pool room? A. The west side.

Q. Railroad side? A. Yes, sir.

Q. Now go on. A. He said the team was waiting, or something to that effect, I should think. Then he called another Haller out, — Adolph Haller, I think.

Q. Go on. A. Somebody rapped on the window, and I went out. He asked me how I was fixed.

Q. Was that all the conversation? A. He asked me how I was fixed for a drink. I told him I had no price. He said that wasn't what he meant, — would I have a drink. I told him I would, and we took a couple of drinks.

Q. Where did it come from? A. Where did what come from?

Q. Where did the drink come from? Who produced it? A. Mr. O'Neil.

Q. What did he have it in? A. A pint bottle.

Q. Go on. A. We took a couple of drinks and went around front of the shoe shop, myself, O'Neil and Haller, — Adolph Haller, I think that is the name; we stayed there, I would say, fifteen minutes, stepped into the alley and took a swallow.

Q. Is that the east side of the building? A. The north side, I should call it.

Q. Well, it is the side that is farthest away from the railroad? A. No, sir; where we stood it is in front of Joyce's shoe shop; it is on

Bridge Street. We stepped into the alley and had another drink, went from the alley and went into the pool room.

Q. Now, if O'Neil said anything to Haller about money there, tell that. A. Not at that time; no, sir.

Q. Go on and tell what occurred first. You stepped into the pool room? A. We stayed in there fifteen minutes, I should think, with Haller and Morrissey; we started, three of us, Haller, Morrissey and myself, and come out onto the back steps there.

Q. Yes, go on. What happened out there? A. Well, O'Neil spoke up and said he owed Haller something.

Q. Which Haller? A. The one that was with us, — Adolph Haller.

Q. Tell us what he said. A. He says, "I owe you something," and pulled out a bill and handed it to him. Haller spoke up and says, "You don't owe me as much as that," and looked at the bill.

Q. State just what they did say. A. Well, that is just what they said.

Q. What? A. He said it was a ten-dollar bill. He says, "That isn't right, for you don't owe me as much as that." Then he looked at the bill and said it was a ten-dollar bill. O'Neil looked up and says, "It is simply a mistake," and put the bill back.

Q. What happened next? Go right on. A. We went out into the street, finished the bottle and went out there, and O'Neil sent Morrissey, Mr. William Morrissey, for a bottle of liquor, — to go after some.

Q. What, if anything, did he give him to get it with? A. Gave him some kind of a bill; I couldn't say what it was.

Q. Did Morrissey go? A. Yes.

Q. Did he come back? A. He was gone about five minutes, and came back.

Q. What did he have? A. Liquor; whiskey, I think it was.

Q. How much? A. Pint.

Q. Did you see him bring back the change? A. Handed him something; I couldn't say what it was.

Q. Then what? A. Well, we took a couple of drinks, I think. Haller said he was going home, and left us. We stayed there a few minutes and went back to the pool room.

Q. How long did you stay in the pool room? A. At that time?

Q. Yes. A. Fifteen or twenty minutes, I should say.

Q. Did you hear O'Neil talk in the pool room or in the shed about what he had got? A. No, sir.

Q. Did you hear him say, "I have got the tin?" A. No, sir.

Q. What? A. No, sir.

Q. Stop and think a moment. A. Say that he had the tin?

Q. Any time that evening did you hear O'Neil bragging about having considerable money? A. No, sir.

Q. What? A. I did not.

Q. Did O'Neil remain at the pool room as long as you did? A. Yes, sir.

Q. Did you leave it together? A. Yes, sir.

Q. And when did you leave it? A. At the time they was closing.

Q. Who were in the company when you left it? A. Morrissey, O'Neil and myself.

Q. Whether or not James Wood joined afterwards? A. Yes, sir.

Q. Where? A. Front of the bank.

Q. Now, what occurred in front of the bank? Tell all about it. A. Not much of anything occurred. We stopped there and talked a few minutes, and the officer came along and told us it was getting late, we had better move.

Q. What did you do? A. We went across the river.

Q. Can you tell the jury about looking at the ten-dollar bill there on the bank steps? A. I didn't see any bill at the bank steps.

Q. What? A. No, sir; I didn't see any bill at the bank steps.

Q. Do you remember about trying to get James Wood to go and get a pint? A. No, sir.

Q. Were you talking about anything there on the bank steps? A. I suppose we was.

Q. Well, what? A. One thing and another. Well, it was getting cold, and we thought we would take a walk round, when the policeman said that, and we went towards the depot.

Q. Where did you go? A. To the depot.

Q. At what time did you get to the depot? A. I should say in the neighborhood of half-past 11.

Q. How many of you? A. Mr. O'Neil, Mr. Morrissey, Mr. Wood and myself.

Q. Tell what was done up at the depot now. A. We all walked in, — Mr. Wood didn't go in, — us other three went in. I walked up, I couldn't say whether to Mr. Murdock or the operator, — I was acquainted with Mr. Murdock by name, — and asked him the fare to Baldwinville and Gardner; and one of the others spoke up, "What's the matter with Boston?" The operator said it was a bluff, said we only wanted to get a heat.

Q. Where was John O'Neil when you were asking these questions? A. Laid down on the settee.

Q. Well, what more happened? A. Morrissey said he needn't think we were broke, and took the money out of O'Neil's pocket.

Q. What was the money? A. Ten-dollar bill.

Q. Did the operator look at it? A. I think he did.

Q. What did you do next? A. We went outside down to the engine house.

Q. How long did you stay down there? A. Very few minutes.

Q. What did you do next? A. Probably fifteen or twenty minutes.

Q. What? A. Fifteen or twenty minutes, may be.

Q. What next? A. We came out.

Q. Where did you go then? A. Started up the street towards home.

Q. What time did you start for home? A. I couldn't tell you the time; I hadn't any timepiece with me.

Q. What time did you and John O'Neil part company that night? A. At the crossing, I should think.

Q. What time? A. I couldn't tell you the time.

Q. As nearly as you can tell? A. I should say in the neighborhood of quarter of 1 or 1 o'clock.

Q. Did you see him again next morning? A. Yes, sir.

Q. Where did you see him first? A. Saw him front of Knowlton's tin shop, on the Shelburne side.

Q. What time? A. Nine o'clock; in the neighborhood of 9 o'clock.

Q. Was he alone? A. No, sir; there were some other parties standing there with him.

Q. What were they talking about? A. I couldn't tell you.

Q. At that interview, did you hear him mention that Mrs. McCloud was dead? A. I did not.

Q. How many times did you see him that forenoon? A. I was with him almost all the forenoon.

Q. Did he tell you during the forenoon that he knew Mrs. McCloud was dead before he came down,—that he knew before he came down? A. No, sir.

Q. Didn't tell you of it at all? A. No; I heard it on the street.

Q. Well, when you heard of it on the street, did John O'Neil tell you that he knew it? A. I don't remember him saying anything about it.

Q. How long did you remain at this first place in front of the store? A. Not but a few seconds.

Q. Was there any other person with you besides John? A. Not with me; he was talking with some people, but I don't know who they were.

Q. Where did you and John go from there? A. Went to the blacksmith shop.

Q. Whom did you find at the blacksmith shop? A. We went over to find John Couard.

Q. Was there any talk about Mrs. McCloud's death at the blacksmith's shop? A. No, sir.

Q. What was done at the blacksmith shop? A. I called English Jack out, and asked him to go for a pint.

Q. Who did go for the pint? A. English Jack did, Couard.

Q. Who furnished the money for it? A. O'Neil gave me a ten-dollar bill, and I handed it to English Jack.

Q. What is the true name of English Jack? A. Howard or Couard, I couldn't tell you.

Q. C-o-u-a-r-d? A. I couldn't tell you.

Q. What was done with the pint? A. Went round back of the fish market, back of Frost's livery stable.

Q. Who were they that went in there back of Frost's livery stable? A. Mr. O'Neil, Mr. Morrissey, English and myself.

Q. What were you doing there? A. We drank the pint.

Q. What were you talking about in there? A. Well, we were talking about, — Morrissey and I was talking, — I thought it was a little later than he thought it was when we got home, for something.

Q. Did you talk about the ten-dollar bill? A. O'Neil said he kept it; yes, sir.

Q. Did you talk about the hobo? A. I think he said something to Mr. Morrissey about a hobo.

Q. Well, tell what he said to Mr. Morrissey about a hobo. A. Something about being on the steps, something like that; I don't know.

Q. Tell it all. A. I don't know what it was. He said he — heard him say something about being on the steps, some hobo.

Q. State all. A. That is all I know about it.

Q. Well, what steps? A. I don't know.

Q. What? A. He didn't state — I don't remember just what was; he said something about a hobo being on some steps; that's all I heard.

Q. What, if anything, did he say about a hobo in connection with the ten-dollar bill? A. He said he thought he stole the ten-dollar bill.

Q. What time was it when you were there behind Frost's barn? A. I should say we must have got in there about quarter-past 9.

Q. How long did you stay? A. Probably half an hour.

Q. Any mention of the death of Mrs. McCloud while you were there back of Frost's barn? A. No, sir.

Q. Where did you go then? A. Came out in the street.

Q. Who did you see in the street? A. Saw a crowd collected in front of Mr. Halligan's or Amsden's near there.

Q. Were you and O'Neil both there? A. Yes, sir; and Morrissey and Couard.

Q. When first did you hear, in O'Neil's presence, any remark about Mrs. McCloud being dead? A. That is where I heard it.

Q. From whom did you hear it? A. I think it was Joe Shaw.

Q. What did you hear Joe Shaw say? A. He said they found her up there in the woods, dead. A crowd gathered around there, and a policeman came along and moved us. Crowd was coming there, and Mr. Woodward came and told the crowd to move.

Q. What time of the day was this? A. I should say it was probably quarter of 10, — such a matter; might have been later; I couldn't tell.

Q. When Joseph Shaw was telling that story, did O'Neil say that he knew anything about it? A. Not that I heard.

Q. Hear him say anything about having heard of it before he left home? A. Not that I remember; no, sir.

Q. Where did you go next? A. Walked up the street, and Couard and Morrissey went into the Shelburne Falls House.

Q. Where did you and O'Neil go? A. We stood round and heard people talk.

Q. How long did you and O'Neil stand around hearing people talk? A. Probably half an hour.

Q. What were the people talking about? A. Talking about finding the woman.

Q. During all that half-hour, did O'Neil tell you he knew anything about it? A. Don't remember speaking to O'Neil about it.

Q. After that half an hour, where did you and O'Neil go? A. Stood there, and Couard came out.

Q. Where did you go then? A. He asked Couard to go and get a pint.

Q. Did he go? A. Yes, sir.

Q. Who furnished the money? A. I think Mr. O'Neil asked him to go.

Q. Did he bring the pint back? A. Yes, sir.

Q. What did you do with that? A. Atkins, O'Neil, Couard and myself went around back of the fish market again.

Q. Back of Frost's stable? A. Yes, sir.

Q. Same place you were before? A. Yes, sir.

Q. How many were there this time? A. Four of us.

Q. What did you talk about there? A. I couldn't tell you.

Q. How long did you stay there at this time? A. Oh, an hour, or such a matter.

Q. You had both heard that Mrs. McCloud was dead before you went around there the second time? A. Yes, sir; heard it in front of Amsden's.

- Q. Talk some about that? A. I don't remember we did.
- Q. Perhaps you did? A. I couldn't state.
- Q. Did you talk there about the loss of the bill this second time?
- A. I don't think so.
- Q. Had he found his bill at that second visit back of Frost's barn?
- A. I don't think he had.
- Q. What time was the second interview back of Frost's barn?
- A. It was probably 11 o'clock, or a little after.
- Q. Probably 11 o'clock? A. I should think so.
- Q. At either time when you were talking about the ten-dollar bill back of the barn, what did O'Neil say about it, — that it was gone?
- A. Said it was gone, — "To hell with it!"
- Q. Did you have any errand back of the barn the second time at 11 o'clock? A. Only to drink a pint.
- Q. Did you do that? A. Yes, sir, — two of them.
- Q. Two pints? A. Yes, sir.
- Q. What did you and O'Neil do after the 11 o'clock visit back of Frost's barn? A. Well, I got "knocked out," — drunk.
- Q. Do you recollect anything further of O'Neil's movements? A. Not until that evening.
- Q. When did you see him in the evening? A. Over in the alley to the pool room.
- Q. When he was himself overcome? A. He was taken sick.
- Q. Had you had any conversation with him before he was taken sick? A. I was standing there talking with him.
- Q. What were you talking about? A. He said he was sick; he fell down.
- Q. Now, during all that day, did he tell you, or make you know in any way, that he heard of Mrs. McCloud's death before he left home in the morning? A. I don't remember hearing Mr. O'Neil talk about it.
- Q. During all that Friday evening, previous to supper time, did you see O'Neil have any money? A. That Friday? I hadn't seen O'Neil all that day.
- Q. During the several days before Friday, had you known of O'Neil's having any money for three or four days before Friday?
- A. I don't know whether I noticed him have money; he is a man always worked.
- Q. I ask if you saw him have any money? A. I saw him playing pool in there, and pay for playing pool; yes, sir.
- Q. How long before Friday was that? A. I couldn't tell you.
- Q. Did you hear what he said the last time he played pool? A. I can't remember.

Q. Did you hear him say he had spent his 40 cents, and he was **busted**? A. No, sir.

Q. Didn't you hear him say the money was all gone, and he felt **better**? A. No, sir.

Cross-examination.

Q. (by Mr. DOWLIN). How old are you? A. Thirty-seven.

Q. How long have you lived in Shelburne Falls? A. I was born **in** Buckland; lived there off and on all my life.

Q. What has been your business for the past five years? A. **L**aborer, working on the railroad, and all kinds of jobs I could **get**.

Q. How long have you known Jack O'Neil? A. Known him since **he** was a boy.

Q. What time was it you left your home Friday night, January 8? A. Five minutes past 6.

Q. Where did you go after you left your house? A. Went to the **post-office** to mail a letter for my father.

Q. Where did you go from the post-office? A. Went to the pool **room**.

Q. Whom did you see in the pool room when you went in? A. **Ed. Haller** and Louis Vice.

Q. What time was it? A. I should say it would be in the neighborhood of twenty minutes past 6.

Q. How long were you in the pool room before you went out? A. **Before I went out?**

Q. Yes, out doors. A. Probably an hour and a half, or such a matter.

Q. When was the first time that you went out of the pool room? A. When O'Neil called me, or somebody rapped on the window; I wouldn't say —

Q. That is the first time that you went out? A. That I remember; **yes, sir.**

Q. Do you remember who was in the pool room while you were there? A. There was a crowd there; I couldn't tell who was there; I didn't take no notice.

Q. Do you remember William O'Connell coming into the pool room? A. I saw him that evening there some time.

Q. What were you engaged in while you were in the pool room? A. Well, I was reading a paper and looking at the pool game.

Q. Reading a paper part of the time? A. Yes, sir.

Q. You didn't pay much attention to who came in and who went out, did you? A. No, sir; I did not.

Q. And can you state when William O'Connell came in there? A. I couldn't.

Q. Can you state when William Morrissey came in there? A. No, sir; I could not.

Q. Can you state what time any of them went out of there? A. No, sir.

Q. Can you state what time you went out of there? A. As near as I can judge, I said from 8 to quarter-past 8.

Q. How did you judge? A. Well, from the time that I stayed there. I had no way of knowing, but—of course I didn't consult no timepiece—only in guessing.

Q. Was there any clock going in the pool room? A. Yes, sir.

Q. You didn't look at that at all? A. No, sir; I did not.

Q. Have you any way of knowing, only just from— A. I am guessing, sir.

Q. Where were you sitting when you heard some one rap on the windows, as you state it? A. Sitting on the south side of the building in the room.

Q. And where was that rap, on the east or west window? A. It was on the west window, on the door.

Q. How near the door were you? A. Probably eight or ten feet—

Q. What did you do in response to that rap? A. I went out.

Q. And when you got up and went out, whom did you see out there? A. Mr. O'Neil and Mr. Haller.

Q. O'Neil passed you a bottle? A. Yes, sir.

Q. Been anything drank out of it when he passed it to you? A. No, sir.

Q. It was full, was it? A. Yes, sir.

Q. How many drinks did you have out of it? A. I had three.

Q. No, at that time? A. Oh, two on the steps.

Q. Two at that time? A. Yes, sir.

Q. How many drinks had you had before, that day? A. Not a one.

Q. The first drink you had had that day? A. Yes, sir.

Q. Well, where did you go after you had taken your second drink?

A. Went around in front of the shoe shop to Joyce's.

Q. Did you meet anybody there? A. Not at that time; no, sir.

Q. Where did you go from there? A. Went into the pool room.

Q. Went through the alleyway? A. Yes, sir.

Q. And when was the first time William Morrissey went out with you? A. The first time,—the second time we went around to the alley and stayed there a few minutes, he came out with us.

Q. Now, was it when you were drinking in the alley, the first time or the second time, that O'Neil offered to pay Haller? A. It was when we came out of the pool room the first time, back into the alley.

Q. Morrissey wasn't there then? A. Yes, sir.

Q. Didn't you go back into the pool room before Morrissey came out? A. Why, we went into the pool room, yes, sir; when we walked into the alley, Haller, O'Neil and myself went into the pool room, stayed in there fifteen minutes, and Morrissey came out with us.

Q. You had two drinks in the alley before Morrissey came out? A. We had them on the steps, — the front steps.

Q. The steps of what? A. The pool room, where we went out, I told you.

Q. Did you hear any expression of O'Neil's claiming that he owed Haller a quarter more than the 75 cents that was stated? A. I did not.

Q. What did you do after you drank there with Morrissey and O'Neil and Haller? A. We went out in front of the shoe shop.

Q. Where did you go after that? A. Sent Morrissey after a pint, — O'Neil did.

Q. Did you drink that up? A. Did we drink that up?

Q. Yes. A. I think all but a little. Morrissey left us and we took a drink or two, I couldn't tell you how many, and went back into the pool room again.

Q. Do you remember O'Neil's being sick out in the coal shed? A. Yes, sir; or outside there.

Q. When was the first time that that was called to your attention? A. I was urinating, and I looked out and saw him getting off his hands and knees.

Q. Where were you when you saw O'Neil getting off his hands and knees? A. I looked out from the door. I was in the room there, in the closet, shed there, whatever it was, coal shed, and they keep wood there, and there is a closet there.

Q. And you saw O'Neil get off from his hands and knees by the doorway to that closet, or that shed? A. He was over nearer the corner of the other building.

Q. What building was that? A. I think it belongs to Philip Ost. I think there is a milliner shop there now; there was nothing at that time.

Q. How far was he from you when you saw him getting up from his hands and knees? A. Fifteen or twenty feet.

Q. How soon after you saw him getting off his hands and knees did you hear him exclaim that he hurt his head? A. I walked into the pool room, stayed three or four minutes, and I looked over and saw William Shaw up on a chair looking at his head.

Q. Did you make any inquiry about it? A. He came over to me afterward.

Q. What did he say to you? A. He asked me to look at his head.

Q. Did you look at it? A. Yes, sir.

Q. What did you find? A. I found it was kind of scraped through,
— through there a little.

Q. Did it look like a fresh wound? A. I couldn't tell; it was only
scraped a little, — just as though it was scraped.

Q. Wasn't cut deep at all? A. No, sir.

Adjourned.

FIFTH DAY.

JULY 23, 1897.

The roll of the jury was called, and the prisoner answered to his name.

Cross-examination of CHARLES WOODWARD — resumed.

Q. (by Mr. DOWLIN). What did you do after you examined Mr. O'Neil's head? A. Stayed in there about fifteen minutes, watching them play pool.

Q. Did Mr. O'Neil stay in there too? A. I think he did.

Q. Were Morrissey and Haller there too? A. Morrissey was; I could not say whether Haller was, or not.

Q. Where did you go after that? A. We went out in front of the shoe store again.

Q. Who went with you? A. What did you say?

Q. Who went with you? A. Morrissey, O'Neil and myself.

Q. Well, what did you do in front of the shoe store? A. Met Tom Glassett.

Q. What did you do there? A. Sent Morrissey for a pint.

Q. Did you have any other pint that night besides the one that Morrissey brought back? A. Morrissey brought two pints.

Q. So that you had two pints after O'Neil was taken sick, did you? A. I couldn't say whether we had two after, or not; I couldn't state just the time it was that he was taken sick.

Q. When was the last pint finished or drank up in front of the shoe store? A. I should say very near 11 o'clock.

Q. Where did you go after you drank that? A. Across the river, to the Buckland side; went to the depot.

Q. What led you to go up to the depot? A. Well, it was cool, and we thought we would go up there and get a heat, — warm.

Q. Did you hear O'Neil make any expression about leaving town before you started for the depot? A. I did not.

Q. Did he in your presence at any time before you started for the depot make any expression about leaving town? A. Not to me.

Q. Did he to any one in your presence? A. Not that I heard; no, sir.

Q. After you got up to the depot and went in there, did you say to the ticket agent, "How much is the fare to Boston?" A. No, sir.

Q. Did you say, "How much is the fare to Baldwinsville?" A. Yes, sir.

Q. What expression, if any, did you hear any of your party make? A. Somebody spoke up and said, "What is the matter with Boston?"

Q. Was it O'Neil that said that? A. I couldn't say; my back was turned.

Q. What was O'Neil doing? What did you see O'Neil doing as you turned around? A. He was stretched on a settee, laid down.

Q. Did you notice whether he was asleep, or not? A. I thought he was kind of dozing off; he acted so.

Q. In consequence of what you said, what did you hear the station agent say? A. I heard either him or Mr. Murdock say it was a bluff; we only wanted a heat.

Q. And in consequence of what either Mr. Murdock or the station agent said, what did you hear Mr. Morrissey say and see him do? A. He says he wasn't broke, and went over and pulled out a bill out of his pocket; went to the settee where he was laying.

Q. Now, are you sure he said, "He isn't broke," or, "We are not broke?" A. I couldn't tell; it is my opinion, though, that he says he wasn't broke.

Q. How long did you stay in the station at the depot? A. Not but a few minutes; he ordered us out.

Q. The station agent ordered you out? A. Yes, sir.

Q. Where did you go after you were ordered out by the station agent? A. To the engine house.

Q. And about what time was that you started for the engine house? A. Well, I should say a little after 12.

Q. Were you under the influence of liquor then, Mr. Woodward? A. To a certain extent; yes, sir.

Q. When you saw Jack lying down on the settee in the depot, after you had heard some one say, "What is the matter with Boston?" did you think that he was under the influence of liquor? A. Did I think he was? He had been drinking.

Q. Didn't some of you have to help him off the settee and help get him to the depot? A. I couldn't say. The station agent shook him up; I couldn't say whether he lifted him up, or not; he shook him and he told him, "You don't want — Yank, you don't want to go nowhere to-night; you don't want to go to the Hub!" and shook him up.

Q. Wasn't he in a sort of a drunken stupor? A. He had been drinking; yes, sir.

Q. How long did you stay at the engine house? A. Not but a few minutes; probably twenty minutes.

Q. How many were there, — there at the engine house? A. I saw nobody but us three and the wiper.

Q. Who is the wiper? A. William O'Brien.

Q. From the time you were called out by the tapping on the window in the pool room to the time you have stated as being with him in the engine house, did you lose sight of John O'Neil that night? A. No, sir.

Q. About what time did you leave O'Neil that night, and whereabouts? A. Well, we all came out of the engine house together, and he was taken sick. He was gagging, kind o' throwing up, and Morrissey and I started up the track and somebody walked right along behind us, and we supposed O'Neil. We went to the railroad crossing and somebody walked over where Mr. O'Neil lived, Green Street, and Morrissey and I went home.

Q. About what time was that? A. Somewhere in the neighborhood of 1 o'clock.

Q. (by Mr. KNOWLTON). Friday night? A. Yes, sir.

Q. (by Mr. DOWLIN). Where do you live, Mr. Woodward? A. I live on the Buckland side.

Q. On what street? A. William Street, I think they call it; the street ain't numbered.

Q. Will you point out on the map there the way that you go from the bridge to get to your home? A. What is this [indicating], — the Methodist church?

Q. There is the Methodist church there, and there is the bridge and this is the State road. A. Well, if this is the bridge, I come up here to the church and go up that way.

Q. Up here to the church? A. Yes, sir.

Q. And you go up that way, and up that way; and about how far from this corner here is your home up this way? A. Well, very near a quarter of a mile, I should say.

Q. About how far up is your home from the railroad track, if the railroad track was continued along here? A. Oh, it is five or six rods right down over across the road, the nearest place to it.

Q. So that after you left O'Neil you came down Ashfield Street, turned up round the corner by the Methodist church, went up that hill there and went home? A. I think I went up the lower road. You can go up the lower road — it is nearer — and cross up through the lot; I think this is the way I went that night.

Q. You went up the State road and crossed across? A. I think I did.

Q. Does that road you live on run parallel with the State road? A. Very near; yes, sir.

Q. Do you know what time it was you got home that night? A. I didn't consult the clock, but, guessing, 1 o'clock I should judge.

Q. You went to sleep? A. I went to bed; yes, sir.

Q. And you don't know what time it was when you got up? A. I should think about 8 o'clock in the morning.

Q. You are guessing? A. I didn't look at the clock.

Q. And did you eat your breakfast after you got up in the morning? A. I did not.

Q. Where did you go after you got up? A. I went down the track, down to the Woodward House. They had a blow-out there a couple of nights before, and I wasn't to it —

Q. Hold on, just answer my question. You crossed over from the road up there, about a quarter of a mile above this corner on to the railroad track? A. Yes, sir.

Q. And walked on the railroad track down back of the Woodward House? A. Yes, sir.

Q. And then came down over the bank and went into the Woodward House bar room, — is that it? A. Yes, sir.

Q. What did you do, if anything, in the Woodward House bar room? A. Asked Leon Woodward what was the matter with a pint. He says, "You don't want much!" I says, "Well, no; not very much!"

Q. Did you get anything to drink in there that morning? A. I did not; no, sir; I did not.

Q. Well, you stayed there and talked with Leon a while, discussing the subject of whether you could have a pint, or not. A. He just simply said that I couldn't; asked me why I wasn't round to the blow-out, if I wanted any drink, or something like that.

Q. Oh, you wanted a pint without paying for it? A. Yes, sir.

Q. Well, where did you go after you left the Woodward House? A. I went across the bridge, the Shelburne side.

Q. After you had been round there a while did you meet O'Neil? A. O'Neil was standing in front of Knowlton's tin shop.

Q. Standing in front of Knowlton's tin shop? A. Yes, sir.

Q. Now, Knowlton's tin shop is right there, is it? A. Yes, sir; it is the first building on the left.

Q. How far from Knowlton's tin shop is the blacksmith shop that you speak of? A. It is right round the corner of the block.

Q. Right around the corner in back here? A. Yes, sir.

Q. And you go down Water Street to get to it? A. Yes, sir.

Q. Now, can you swear, Mr. Woodward, that when you saw O'Neil he was standing in front of the tin shop, or he was just coming round the corner from Water Street? A. I think —

Q. Positively? A. He was standing there.

Q. Where did you go with O'Neil after you met him there? A. Went over to the blacksmith shop.

Q. Whom did you see at the blacksmith shop? A. English Jack, Edwin Gerry and Jimmie Connell.

Q. I didn't catch the second name. A. Gerry, — Ed. Gerry, the man that was running the shop.

Q. Well, did you go into the shop? A. I did after; I called English Jack out first.

Q. How soon after you called English Jack out was it before you had in your crowd a pint of whiskey? A. Probably ten minutes.

Q. And how many of you were there that drank out of that pint? A. Four.

Q. Who were the four? A. O'Neil, Morrissey, Couard and myself.

Q. Did Morrissey drink out of that pint? A. Yes, sir.

Q. Did you drink the pint up? A. I think we finished it; yes.

Q. And before you went out onto the street after drinking that pint up, did you send for another pint? A. No, sir.

Q. You took a walk then? A. Yes, sir.

Q. Where did you go? A. Went out into the street.

Q. Whereabouts on the street? A. Well, up in front of Halligan's store, on Bridge Street, — Halligan's or Amsden's, right in there.

Q. Right in there by the bank? A. Yes, somewhere just west of the bank.

Q. How long did you stay there? A. Only a few minutes. A crowd gathered there, and we stopped to hear what they was all talking about.

Q. So, just as soon as you had finished the pint you went directly from Frost's livery stable barns, which are located there, are there [indicating on map]? A. Yes, sir.

Q. Directly on the street? Go up the driveway between the bank and Shelburne Falls Hotel? A. No, sir.

Q. Or go out on Water Street and went up? A. Went up on Water Street and went up.

Q. Turned up on Bridge Street, and right there by the bank, very near the corner of Water Street, saw a crowd assemble? A. Yes, sir.

Q. There is where you heard them discussing about Mrs. McCloud's body being found, wasn't it? A. Yes, sir.

Q. And that was immediately following your drinking the pint of whiskey just back of that building, wasn't it? A. Yes, sir.

Q. How long did you stay with the crowd? A. Well, we walked up as far as the Shelburne Falls House, and Morrissey and English Jack went in. O'Neil and I stayed around the street listening to the crowd talking.

Q. How long was it before Morrissey and English Jack joined you again? A. Morrissey didn't join us; English Jack did.

Q. Morrissey didn't join you again? A. Not at that time.

Q. So that all that Morrissey was with you, after you had drank the first pint of whiskey and came up here and stood in front of the bank, was to walk up and down the street a little while? A. While they were in the hotel, O'Neil and I was around.

Q. Did they walk up and down the street with you, — Morrissey and English Jack? A. They went into the hotel.

Q. They left you there? A. Yes, sir.

Q. When the crowd moved along, they left you? A. Yes, sir.

Q. And went into the hotel? A. Yes, sir.

Q. You didn't see Morrissey then? A. I think I saw him again that day in the pool room.

Q. Did you see him again that morning? A. Not that I remember.

Q. You were with O'Neil all the rest of the morning? A. Until near noon, as far as I could remember.

Q. How long afterwards was it when you saw English Jack? A. From the time he went into the hotel?

Q. Yes. A. I should say he was in there half an hour.

Q. What did you and English Jack and O'Neil do then, after English Jack joined you again? A. We met Joe Atkins, and Mr. O'Neil sent English Jack for a pint of whiskey.

Q. Where did you drink that? A. Went around back the same place, — back of the fish market.

Q. Finish it up there? A. Yes, sir.

Q. Did you get another pint that morning? A. We did.

Q. Did you leave the place where you drank the second pint until the third pint came there? A. We had only got two pints the second time.

Q. You had had one pint with Morrissey? A. Yes, sir.

Q. Now, you had another pint with English Jack, O'Neil and yourself? A. And Joe Atkins.

Q. Was he with you? A. Yes, sir.

Q. Now, did you have another pint? A. Yes, sir.

Q. Well, my question is, did you leave the place where you drank the second pint, with O'Neil, Atkins and English Jack, until after the third pint had come back there? A. We drank one pint when we first went around, and after we went around on the street, drank two more.

Q. No; after you drank a pint with English Jack, Atkins and O'Neil, did any one send for another pint? A. Yes, sir.

Q. And did you wait there for it? A. Yes, sir.

Q. And did you drink that pint before you went anywhere? A. Yes, sir.

Q. So that you drank two pints in succession after you went back to the stables with Atkins? A. Yes, sir.

Q. And O'Neil was there all the time? A. Yes, sir.

Q. So that O'Neil had had his share of the three pints of whiskey before he went out on the street again? A. Yes, sir.

Q. Were you pretty drunk by the time you had got the third pint? A. Yes, sir; I was.

Q. Do you remember what O'Neil's condition was? A. I know I was so drunk I didn't know much about it until I got over in the pool room, when I came to my senses.

Q. Do you remember what took place after you got out on the street, after drinking the third pint of whiskey? A. I do not; I have a faint recollection of going to the blacksmith shop and getting put out.

Q. And where did you come to your senses after that? A. In the pool room.

Q. What time of the day was it? A. Well, it was getting dusk, I should say between 7 and 8 o'clock.

Q. It was getting dusk? A. Yes.

Q. Was that the last you remember after drinking the third pint of whiskey, — of coming out on the street, and then a dim recollection of being put out of the blacksmith's shop, and everything was then blank until you waked up in the pool room, and it was getting dusk? A. Yes, sir.

Q. Is that correct? A. Yes, sir; I don't know whether I was asleep, but I found myself there.

Q. Until you came to your senses in the pool room, and it was getting dusk? A. Yes, sir.

Q. Did Jack drink as often as you did? A. I think so.

Q. There was no partiality shown between the members of the crowd? A. No, sir.

Q. Did you see O'Neil after you came to your senses in the pool room? A. I saw him out in the alley.

Q. What was he doing out in the alley? A. He was taken sick there.

Q. How did he act? A. Well, he fell down and straightened himself out.

Q. Was he in a helpless condition? A. Well, three or four of us put him into a wagon.

Q. What was done after you saw him on the ground in the alley? A. He went for a team, — Heathcote, I think his name is, Eddie Heathcote; I think he was working for Frost, or some liveryman.

Q. Did you help put him in the wagon? A. I did.

Q. Did you go home with him? A. Not at that time.

Q. Did you go up to the house afterwards? A. Yes, sir.

Q. What for? A. To get my overcoat.

Q. What was your overcoat doing up at the house? A. I put it under his head when he was going home.

Q. So that he was so helpless when he was going home that you thought it necessary to put your overcoat under his head? A. It was rough going, and he was going in an express wagon, and I thought it would keep him from bumping his head.

Q. Did you have any talk with him after you got to his home? A. No, sir.

Q. Did you hear him say anything there? A. No, sir; I don't remember seeing him.

HENRY S. CHAPMAN — *sworn*.

Q. (by Mr. HAMMOND). Your name is Henry S. Chapman? A. Yes, sir.

Q. On Friday, January 8, were you the night operator at the Shelburne Falls station? A. I was.

Q. Do you recollect whether or not you saw the defendant that night? A. I did.

Q. State when and where, and state fully the circumstances. A. He came into the station about 11.30 p.m., in company with two or three others.

Q. Name them. A. Morrissey and Woodward were two; I don't know as I know the other.

Q. Go on. A. A few minutes afterwards O'Neil came to the ticket window and says to me, "Holloa, Chapman." I just turned round and saw it was O'Neil, and I made no conversation with him. I think I said, "Holloa," but I think that was all. A few minutes afterwards, one or two of them went out, and I had occasion to go out in the waiting room, and found O'Neil asleep on the settee. Woodward was with him, and they were the only two in the station at that time; and I told Woodward that I couldn't allow them to stay in the station, as it was against the rules of the road to allow people to lounge in the station after station hours, and I wanted to get him out as soon as possible. He said that O'Neil —

Mr. BEER. We object, as it appears from the witness that the defendant was asleep, so that it would not be in the presence of O'Neil.

Q. Whether O'Neil joined in that conversation? A. No, sir; he didn't say a thing at that time.

Q. Whether he had awakened? A. I tried to awaken him a few minutes afterwards, but I didn't succeed. Later on Morrissey came into the station and says, "You want to get him out?" I says, "Yes, I want to get him home."

Mr. BEER. We object.

SHELDON, J. It is not competent.

Q. Well, whether O'Neil heard. Go on. A. Then Woodward spoke up next, and says, "He wants to go on the train."

Mr. BEER. We object.

Q. Was O'Neil awake at this time? A. No, sir; he was not.

Q. I only want what he heard. A. I don't think he realized anything that was said at that time.

Q. What was done? A. I tried to rouse him again, and we made an effort to get him on to his feet, but he didn't seem to have any life. Then there was somebody spoke about his staying. This was Woodward, was, —

Q. Whether you saw any money? Go on with this. A. In order to get what led up to that, I should have to say something about the conversation that occurred. Woodward was saying he wanted to go on the train, and had money to pay his fare; and Morrissey says, "Let's see what he has for money," and put his hand in his vest pocket.

Q. Whose? A. Morrissey did, in O'Neil's vest pocket. He found nothing in his vest pocket, and putting his hands in his pants pocket, he found a ten-dollar bill, and he pulled it out and held it up. He says, "You see he has money to pay his fare." I says, "Yes, I see he has, but I don't think he wants to go on the train;" and after that we aroused him up enough to get him on to his feet, and the three of us got him to the entrance of the station, and got him out and got him started toward the village.

Q. Did you see the men later that night? A. About 1.30 or 2 o'clock in the morning I was at the front entrance of the station, and I heard footsteps, and I waited to see who was passing; and it was the three, — the trio, Woodward, Morrissey and O'Neil.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Did you hear O'Neil say anything about going anywhere on the train? A. No, sir; not personally; he did not.

EDWARD C. MURDOCK — *sworn*.

Q. (by Mr. HAMMOND). Your full name? A. Edward C. Murdock.

Q. Were you with Mr. Chapman, the night operator, at the Shelburne Falls depot, on Friday night, January 8? A. Yes, sir.

Q. State whether or not you saw John O'Neil and others there?

A. I saw Mr. O'Neil, Mr. Morrissey and Mr. Woodward there.

Q. About what time? A. I should say about 11.30.

Q. Whether while they were there anything was done about a

ticket? A. Not that I know of. Mr. Woodward spoke about getting a ticket and going to Boston, and then he spoke about going to Baldwinville.

Q. Did you go out into the outer room, or remain in the telegraph office? A. I went out in the outer room.

Q. State what you saw there. A. I saw Mr. O'Neil asleep on the settee, and I saw Mr. Woodward out there. Mr. Morrissey, he had been out somewhere. He came in. I saw him take a ten-dollar bill out of Mr. O'Neil's pocket.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Had they all been drinking? A. Well, I should think they had.

Q. Were they pretty drunk? A. Well, they were pretty well filled up.

Q. O'Neil was the drunkest one? A. I should say he was.

Q. Morrissey was pretty drunk? A. Yes, sir.

Q. Did you hear O'Neil say anything about going anywhere on the train that night? A. No, sir.

Q. Did he say anything? A. He did not.

Q. The conversation was carried on by Mr. Woodward? A. Mr. Woodward; yes, sir.

Q. And Mr. Morrissey was pretty drunk when he took the bill out of Mr. O'Neil's pocket, wasn't he? A. Yes, sir.

EDWARD HALLER — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Edward Haller.

Q. Where did you work on Friday, January 8, if at all? A. Pool room, — Haller's pool room.

Q. Shelburne Falls? A. Yes, sir.

Q. Who kept the pool room? A. My father.

Q. What is his name? A. John Haller.

Q. Are you related to Adolph Haller? A. Yes, sir.

Q. How? A. Cousin.

Q. Whether on this Friday, January 8, you saw John O'Neil? A. I did.

Q. When first on that day? A. I think it was in the afternoon, between 1 and 3 o'clock.

Q. State what, if anything, you saw of him at 1. A. I think I see him out in the street in front of Mr. Halligan's, with Mr. Wood.

Q. Did you observe what he was doing? A. No, sir.

Q. What next? A. In the pool room.

Q. At 3 o'clock? A. Between 1 and 3.

Q. Go on and state all that occurred in the pool room. A. Why, they was talking. Then they went over the river; says, "Come on over the river." O'Neil and Wood and Kennedy went off.

Q. Did you see them again? A. No, sir; not till after 9.

Q. How frequently had you seen John O'Neil in the days before Friday? A. See him most every day.

Q. When was the last time you saw John O'Neil have any money? A. About a week before.

Q. State the circumstances of that. A. Why, he played pool till he got stuck for four games, and then he says he was busted; he felt better.

Q. What was the cost of four games? A. Forty cents.

Q. After that date when he played pool and paid 40 cents, whether you saw him have any money down to supper time of Friday night? A. I did not.

Q. Whether you heard him make any declaration about it during that time other than the one you have here mentioned? A. No, sir; not that I remember.

Q. What was the last you saw of them before 6 o'clock Friday? A. I think it was when he went out that time.

Q. Did you see him again that night? A. I did.

Q. When? A. Between 8 and half-past 8.

Q. And where? A. In the pool room.

Q. State all the circumstances, without further question. A. He stuck his head in the pool room and says, "For Christ's sake, Auction, are you going to keep that fellow out there all night?"

Q. Well, go on and state what was done then; state everything that happened. A. He came in, and then he called my cousin out in the coal shed.

Q. Well — A. And then I think I went out and spoke to Heathcote, and I came back again, and I see him out in the alley, — Morrissey, and O'Neil, and my cousin, and Woodward.

Q. What, if anything, did you see done, either in the coal shed or alley? A. Why, I supposed they were drinking.

Q. Well, go on; follow right along, and tell what they did and what they said. A. Then he came in again and wanted to play pool, pulled out some money, and he says, "I got the tin;" shoved it up under my face; and Woodward says, "It is Confederate, Yank," and he says, "No, it isn't, — is it, Auction?"

Q. Was there any more conversation about those bills, that you now remember? A. I says, "You must have struck it rich, Yank."

Q. Well, any answer? A. He says he did.

Q. How much did you see of the bills? A. I saw a ten-dollar and a five-dollar bill.

Q. Describe what he did, and what he said. A. Well, talking round there, and he went out, and then he came back in, and said he ran against my coal box and split his head. Mr. Shaw got up on a chair and examined his head and said, "Christ, Yank, where have you been? Your head is full of slivers." I went over on the floor and looked up at him, and I saw there was a little wound in his head.

Q. Describe the appearance of that wound. A. Well, just as though he fell against something, and kind of scraped.

Q. Well, as to whether it was dry, or not? A. Well, it didn't look as though he had done it just at that moment. [Objected to.]

Q. Describe its appearance as well as you can, whether it was fresh, or not? A. I couldn't say whether it was fresh, or not.

Q. Describe its appearance. A. Why, it looked as though— [Objected to.]

SHELDON, J. If he can describe the appearance, he may do that.

Q. (by Mr. HAMMOND). Do so. A. It looked as though there had been a little blood there, and it had been wiped away. There was probably a drop or two left. I wasn't very close to it.

Q. After that did you see anything of him? A. I think he went out of the pool room about half-past 10, — probably before that; I don't remember.

Q. Were you outside the time the five-dollar bill was sent off to be changed? A. I don't think I was.

Q. Did you see him the next day? A. I did.

Q. Where first the next day? A. Front of the hotel.

Q. About what hour? A. About 10 o'clock, I should think it was.

Q. What was he doing? A. He was talking with the crowd there. I asked him what was the matter, and he said they found Crittenden's daughter up in the woods. I asked him who it was, and I forget, some name, some Crittenden.

Q. State all he said about it. A. And later that day —

Q. At this time, whether he said anything to you as to the manner of her death? A. Oh, he says that her father said she had fainting spells, and might have wandered over the rocks in one of those.

Q. Who were present? A. I think Charles Woodward was there, Mr. Erving, Joe Shaw, Depledge and some more; I don't remember who they were.

Q. This was about 11 o'clock? A. About 10.

Q. When next did you see him, if at all? A. I saw him that afternoon.

Q. Where? A. Front of Jenks's shoe store.

Q. Who were present? A. Mr. Schontag and myself, and I don't know who the others were; there was quite a few along there.

- Q. What was he doing? A. Sitting down.
- Q. What did you hear him say, if anything? A. I saw him go up to the clerk in Jenks's shoe store, and he said, "I heard she died in some chills," or something; I don't know what they were.
- Q. Who said that? A. O'Neil.
- Q. At what hour? A. About 1 o'clock.
- Q. Did you see him later? A. Yes, sir.
- Q. When? A. Saw him around the street; saw him in the pool room.
- Q. What hour? A. About between 4 and 5, I think.
- Q. State all that occurred there. A. He came in, sat down, and walked around a little and then went out again; and I saw him on the street about 5 o'clock.
- Q. Did he make any remark in the pool room? A. Not that I remember.
- Q. State the interview at 5 o'clock. A. I saw him out in the street; I didn't talk to him at that time. There were two fellows with him, I forgot who they were; they were trying to take him off the street.
- Q. Was he talking? A. I couldn't say whether he was talking, or not.
- Q. Was that the last? A. No, sir; saw him after 6 o'clock again.
- Q. State that. A. Saw him in the pool room, and he got up and went out and fell down in the alleyway; I went out and saw him lay there.
- Q. Was that the last you saw of him prior to his arrest? A. No, sir; Heathcote and a couple of fellows grabbed him and tried to bring him in there, and I told them they could not bring him in. They went and got a team and took him away. That is the last I saw of him.
- Q. You used the name "Yank." To whom did that refer? A. Jack O'Neil.
- Q. Whether that was the nickname for the prisoner? A. Yes, sir.

Cross-examination.

- Q. (by Mr. DOWLIN). What is your nickname, Mr. Haller? A. Auction.
- Q. About all the boys go by nicknames around your home, don't they? A. Most of them.
- Q. How long have you lived in Buckland? A. About two years.
- Q. Where did you come from there? A. Shelburne.
- Q. How long had you lived in Shelburne? A. Eighteen years,—nineteen years.
- Q. All your life? A. Yes, sir.
- Q. Born there? A. Yes, sir.

Q. Known O'Neil a good while, haven't you? A. Yes, sir.

Q. Were you running the pool room all day Friday, January 8?
A. I was not.

Q. What time did you go there in the morning? A. About 9 o'clock.

Q. Well, how long did you stay there before you went out again?
A. About half-past 11.

Q. When did you get back there again? A. A little after 1.

Q. How long did you stay before you went out again? A. Well, I was sitting out in front on the street that afternoon.

Q. When did you go back from the street? A. Some time that afternoon.

Q. Well, were you there by 5 o'clock in the afternoon? A. I was.

Q. How long before you went out of the pool room again? A. Half-past 7.

Q. What did you go out for at half-past 7? A. Went up for the mail.

Q. How long were you out that time? A. Probably half an hour.

Q. Did you eat supper there? A. I did.

Q. Who brought it to you? A. My brother.

Q. Where did you eat it? A. In the little room.

Q. The pool room is located right there [indicating on map], in the rear of this building here, and there is one large room where the tables are? A. Yes, sir.

Q. And two little anterooms that open off? A. Yes, sir.

Q. Now, in which of those little rooms did you eat your supper?
A. In the west.

Q. One towards the track there? A. Yes, sir.

Q. How long were you eating your supper? A. Probably ten minutes, probably longer; probably not as long as that.

Q. You don't know, then, do you? A. I don't know.

Q. Who took charge of the room while you were eating your supper? A. My brother.

Q. What is his name? A. John.

Q. John was playing, wasn't he? A. He was.

Q. Whom was he playing with? A. Vice.

Q. How many were there in the pool room when you came in to eat your supper? A. I don't remember.

Q. Who were in there? A. There was Morrissey, Woodward, Vice, my brother and some more; I can't remember who they were.

Q. What time was that? A. It was about twenty minutes to 7, I should think; somewhere along there.

Q. Twenty minutes of 7 when you were eating your supper? A. Somewhere round there.

Q. How long after you finished your supper was it before you went to the post-office? A. It was about half-past 7 I went up to the post office.

Q. Did you again take charge of the pool room until after you came back from the post-office? A. I did not.

Q. As a matter of fact, did you have anything to do with the pool room or pay any attention to it from the time you got your supper until you got back from the post-office? A. I was in there; I took the money for what pool was played.

Q. Well, did they settle at the end of each game? A. No, sir; they did not.

Q. Johnny was playing with Louis Vice when you started to eat your supper, wasn't he? A. Yes, sir.

Q. They played right along, — how many games? A. I don't remember; I think it was twenty-two games.

Q. How many had they played before you started to eat your supper? A. I don't know; I played one game with them myself.

Q. Who paid for that? A. They.

Q. Then Johnny started to play with him? A. Yes, sir.

Q. And he started when you went to eat your supper? A. Yes, sir.

Q. Johnny had not played any games with him before you started to eat your supper? A. No, sir.

Q. And you say you took the money? A. After they got through playing, I took the money.

Q. They played twenty-two games before you took any money? A. Yes, sir.

Q. When did they get through playing? A. They got through some time that night.

Q. I suppose so. What time that night? A. I don't know what time that night.

Q. Nine o'clock? A. It was later than 9 o'clock.

Q. Ten o'clock? A. I don't know whether it was 10 o'clock, or not.

Q. How long would it take them to play, — you have seen them both play. How long would it ordinarily take them to play a game of pool? A. I don't know how long it would take them to play; all depends on kind of luck they had. They were playing "rotation."

Q. Playing rotation pool? A. Yes, sir.

Q. Does it take longer to play rotation pool than it does to play ordinary pool? A. Yes, sir.

Q. So that they played twenty-two games of rotation pool? A. That is what I think they played.

Q. During the playing of that twenty-two games of rotation pool your brother had charge of the room? A. Yes, sir.

Q. And you had no occasion to take any money, did you? A. No; I didn't have.

Q. Nor you didn't take any money, did you? A. Yes, sir; I did take money when they got through playing.

Q. Whom from? A. From Vice.

Q. I am saying from the time your brother commenced to play pool with Vice, did you take any money? A. No, sir.

Q. You had been there pretty steady all day, hadn't you? A. Yes, sir.

Q. Was O'Neil in there Friday afternoon? A. Yes, sir.

Q. Play any pool? A. No, sir.

Q. Were your brother and Mr. Vice pretty evenly matched as players? A. Yes, sir.

Q. Were they both pretty good players? A. Well, pretty fair.

Q. Quite a crowd watching the game, wasn't there? A. Quite a few.

Q. Now, will you tell me who was in the pool room when you got through eating your supper? A. Vice, my brother, Woodward, Morrissey, — more, I don't remember who they were.

Q. Mr. Stemple in there? A. I don't remember.

Q. Mr. O'Connell in there? A. I don't remember.

Q. Mr. Joyce in there? A. I don't remember whether he was, or not.

Q. Mr. Hart in there? A. I could not say.

Q. Wood in there? A. Yes, sir; I think he was.

Q. James Wood was in there, was he? A. No, sir.

Q. What Wood? A. William Wood.

Q. Was James Wood in there? A. Don't remember whether he was, or not.

Q. Why did you say, "No, sir"? A. Because it was the other Wood I was referring to.

Q. Oh, you don't know whether James Wood was in there, or not? A. No, sir; I don't remember whether he was.

Q. And those names that you have given are all that you can remember that were in there? A. Yes, sir.

Q. Do you know whether O'Neil was in there, or not? A. I didn't see him in there.

Q. Do you know whether O'Neil was in there, or not? Answer yes, or no. A. No, sir; I don't.

Q. When was it that you claimed that he had the 40 cents? A. About a week before.

Q. A week before that Friday night? A. About that time.

Q. Was it the Friday night before? A. I don't remember.

Q. Was it the Thursday night before? A. I couldn't swear.

Q. Was it the Wednesday night before? A. I don't remember whether it was.

Q. Can you tell what night it was? A. No, sir; I cannot.

Q. Can you swear that it was only a week before? A. No, sir; I cannot.

Q. It might have been two weeks before, mightn't it? A. Yes, sir.

Q. Can you swear that the 40 cents was all that he had? A. Only by his expressions; he said he was —

Q. I asked you if you could swear that the 40 cents was all that he had? A. No, sir.

Q. As a matter of fact, wasn't it two weeks before Christmas when he played those four games of pool in there? A. I don't think it was.

Q. Will you swear that it wasn't? A. Will I swear that it was?

Q. That it wasn't? A. No, sir; I won't.

Q. When was it you say you first saw O'Neil have some money Friday night? A. Between half-past 8 and half-past 9.

Q. What was the first expression that you heard? A. "I want to play pool."

Q. I didn't catch your last answer. A. He wanted to play pool.

Q. Where did he come from? A. I don't know where he came from.

Q. Was he in the pool room all the time that you saw him that evening before he showed any money? A. No, sir; he wasn't; he went out.

Q. Do you know how many times he had gone out? A. No, sir; I don't.

Q. Where did he come from just before he offered to show any money? A. Came from the shed, — towards that direction, anyway.

Q. Did he come through the door leading from the shed? A. Yes, sir.

Q. Did you notice anything peculiar about his condition? A. No, sir.

Q. Acted all right? A. Yes, sir.

Q. No unusual excitement about him? A. No, sir.

Q. Now, tell us just what he said? A. Wanted to play pool, and he says, "I got the tin;" pulled out the money and showed it to me. Some one said it was Confederate, and he says, "No, it ain't, — is it, Auction?"

Q. Now, who was in the pool room when he said that? A. Wood and Fritz and some more.

Q. Oh, give them all. You have stated before the names of people. Now, who was there when he said that? A. Vice and my brother.

Q. Well, give the rest of them. A. Woodward.

Q. Charles Woodward? A. Yes, sir.

Q. Go on and give the rest of them. A. Morrissey.

Q. William Morrissey. Give the rest of them. A. I don't remember whether my cousin was in there, or not.

Q. Adolph Haller? A. Yes, sir.

Q. You don't remember. Any others there? A. I don't remember whether there was, or not.

Q. Can't you think of any other names of any person that was there then? A. No, sir.

Q. Were there any others in the room whose names you can't think of? A. I don't remember.

Q. Where did O'Neil stand in reference to the pool table, — on the east side of it, the north side of it, the south side of it, or the west side of it? A. When he showed me the money?

Q. When he showed you the money. A. On the north side.

Q. On the north side? A. North-west.

Q. In reference to the pool table, the pool table sits in that room north and south, doesn't it? A. East and west.

Q. Then he stood on the north side [indicating], on this side? A. No, sir; there is a stove right there, and it was right about in there.

Q. In there? A. Yes, sir.

Q. On the opposite side of the table from the stove? A. On the same side of the table as the stove.

Q. On the same side of the table as the stove, about middle way in the room? A. About that; yes, sir.

Q. And where were the people sitting? A. All around.

Q. Around the stove? A. Yes, sir.

Q. And right back of him, along the side of the room? A. No; the pool table wasn't back of him.

Q. He was facing the people when he made that statement? A. He was facing me.

Q. Yes; he was looking toward the people sitting down there, wasn't he? A. Yes, sir.

Q. And he didn't lean over and whisper it to you, did he? A. No, sir.

Q. Well, now, speak right up, just about as loud as he did; let the jury hear you. Now tell me what he said, and tell it to me about as loud as he said it. A. [Witness raising his voice.] He said he wanted to play pool, and that he had the tin, and pulled out the money.

Q. He said it as loud as that, did he? A. Yes, sir.

Q. Did he say it any louder? A. I don't know whether he said it any louder or not.

Q. But you are sure he said it as loud as you have spoken it? A. Yes, sir.

Q. Was there anything to interfere with the others in the room all hearing it? A. No, sir.

Q. Did you go to Buckland that night? A. I did not.

Q. Who was it went to Buckland? A. Nobody; three started to go.

Q. Three started to go? A. Yes, sir.

Q. And didn't go? A. No, sir.

Q. Where did you go? A. Where did I go?

Q. Yes. A. I went in the pool room.

Q. Where was the last place you saw John O'Neil Friday night? A. In the pool room.

Q. At what time? A. I couldn't swear what time; 10, half-past 10, — somewhere round there.

Q. What time did you close your pool room that night? A. I don't remember.

Q. You testified at the former hearing before Judge Lyman, didn't you? A. Yes, sir.

Q. And you were asked by the district attorney this question, "How did it look to you"?—referring to the wound in O'Neil's head, weren't you? A. Yes, sir.

Q. Was your answer that there was no blood about it? A. Yes, sir.

Q. Were you asked this question, "Whether it looked as if the blood was dried down in the hair"? A. Yes, sir.

Q. Was your answer, "It didn't look as though the blood was dry"? A. It looked as though the blood —

Q. Was your answer, "It didn't look as though the blood was dry"?

Mr. KNOWLTON. If you are going to put a part of that in, you had better put it all in.

Q. (by Mr. DOWLIN). Was the question asked you, "Did you see anything peculiar on his head"? Answer yes, or no. A. Yes, sir.

Q. And was your answer, "It was a kind of scrape"? A. Yes, sir.

Q. Was the question put, "Describe his appearance"? A. Yes, sir.

Q. And was your answer, "Why, just as though he had run against the coal box and scraped it"? A. Just as though he had run against something and scraped it.

Q. Was the question asked you, "Did it look," "as to whether the blood was fresh or dry"? A. Yes, sir.

Q. And was your answer, "Well, I didn't see it very plain from where I stood"? A. Yes, sir.

Q. Was the question asked you, "How did it look to you?" and was your answer, "There wasn't much blood about it"? A. Yes, sir.

Q. Was the question asked you, "Whether it looked as if the blood was dry down in the hair?" and your answer, "It didn't look as though the blood was dry"? What do you say? A. It didn't look as though the wound had been done that night, just then.

Q. Yes, or no. I will read it to you again. Was the question asked, "Whether it looked as if the blood was dry down in the hair?" and was your answer, "It didn't look as though the blood was dry"? A. Yes, sir, I think it was.

Q. Is that enough?

Mr. KNOWLTON. Read just beyond there. "It did look kind of dry."

Mr. DOWLIN. I don't understand, your Honor, that we are obliged to put in only what we want to.

SHELDON, J. Oh, you will put whatever questions you please, of course.

Q. (by Mr. DOWLIN). Were you asked "Whether you had made the statement that it was dry blood and not fresh blood?" and was your answer, "I don't remember; I might have said it looked like dry blood from where I stood"? A. Yes, sir.

Q. "Is that the fact about it?" A. Yes, sir.

Q. Hold on, let me read your answer. "Is that the fact about it?" "It did look kind of dry. It naturally would dry out in the cold." Was that your answer? A. Yes, sir.

Q. Who examined the head before you did? A. William Shaw.

Q. Who else looked at it before you did? A. I don't remember.

Q. Did Charles Woodward look at it before you saw it? A. I don't remember.

Q. Did William Morrissey look at it before you saw it? A. I don't remember.

Q. Did any one else look at it before you saw it? A. William Shaw.

Q. How was he standing? A. On a chair.

Q. Did he take hold of his head with both hands? A. I don't remember.

Q. How did he put his hands on his head? A. I don't remember.

Q. Did he put his hand on his head? A. I think he did; I won't swear.

Q. What made you say in the direct examination that it looked as though the blood had been wiped off? A. I said it looked as though the blood had been wiped off, from where I stood.

Q. Well, was there a sort of a streak of fresh blood, or something down over the head? A. I thought it had been wiped like that [showing]. The hair was all sticky.

Q. Looked as though it had been wiped down? A. Yes, sir.

Q. You don't know whether William Shaw wiped it down, or who did? A. No, sir.

Q. It looked like a scrape to you, did it? A. Yes, sir.

Q. Had you seen him before that time? A. When he called me out of the pool room.

Q. Had he been in your pool room before he claimed that his head was hurt? A. Yes, sir.

Q. Had he shown you any money before he claimed that his head was hurt? A. I don't remember whether it was before or after.

Q. When he came in and claimed his head was hurt, what door did he come in at? A. From the shed.

Q. Had you had a drink with him before he claimed his head was hurt? A. I don't remember.

Q. Did you have a drink on the steps, on the west side of the pool room? A. No, sir.

Q. Did you have a drink with him anywhere before his head was hurt? A. Not that I remember.

Q. Do you remember that you didn't? A. No, sir.

Q. Do you remember exactly what time it was that your attention was first called to the fact that his head was hurt? A. No, sir.

Q. It wasn't the first time that you saw him? A. No, sir.

Q. Nor it wasn't the second time that you saw him? A. I don't remember.

Q. Did you say that he had been drinking in your pool room once before, before you knew his head was hurt? A. Yes.

Q. Then it wasn't the second time that you saw him? A. I don't remember whether it was or not. I see him round in there; he would go out, and he would come in again; I don't know whether it was the first or second or third time.

Q. Might have been the third time? A. Yes.

Q. You had seen him quite a little while, hadn't you, before your attention was called to the fact that his head was hurt? A. Yes, sir.

Q. Much as an hour, hadn't you? A. Might have been.

Q. What is your best judgment about its being an hour? A. He was around there quite a while before he said anything.

Q. Round there quite a while. Now, give me your best judgment as to how long that "quite a while" was. A. Why, hanging around inside there, and he would go out and would come in again.

Q. And he went out and came in several times before you heard anything about his head being hurt? A. Yes, sir.

Q. Now, about how long was it, according to your best judgment, from the first time that you saw him that night until your attention was called to the fact that his head was hurt? A. Might have been an hour, and might have been more.

Q. Are you sure that it was more than an hour? A. No, sir.

Q. Does your best judgment tell you that it was an hour? A. No, sir.

Q. What is your best judgment on it? A. I couldn't swear whether it was an hour, or not; I don't remember.

Q. Well, what do you think about it, according to your best judgment from the facts as you know them? A. About an hour, probably more.

Q. About an hour. Did you see anything of O'Neil on the street Friday night? A. After he came in the pool room.

Q. Where was that? A. See him in front of Joyce's store.

Q. How many of you went out to the post-office? A. I don't remember.

Q. At about half-past 7? A. I don't remember.

Q. With whom did you go out? A. I don't remember.

Q. Whom did you meet on the way to the post-office? A. I think I met Mr. Joyce.

Q. When was the team out in front of the pool room? A. Between 8 and half-past.

Q. Could you state about what time it was between 8 and half-past that the team was out in front of the pool room? A. No, sir.

Q. Have you stated before? A. I don't remember.

Q. Didn't you state at the preliminary hearing that it was at twenty minutes past 8? A. I don't remember.

Q. You now put it anywhere from 8 to 8.30, do you? A. Yes, sir.

Q. Did you get into the team that night and go anywhere? A. No, sir.

Q. What remark was it that you said Charles Woodward made when O'Neil showed you the money? A. Nothing that I can remember Woodward made.

Q. Who was it that you said made the remark? A. I said Wood.

Q. Wood? What Wood is that? A. William Wood.

Q. Did O'Neil say anything else to you about money that night? A. Not that I can remember.

Q. Do you remember of O'Neil's being sick that evening? A. Friday evening?

Q. Yes. A. No, sir.

Q. Do you remember hearing him complain of being sick in your pool room? A. Not Friday evening; Saturday evening I did.

Q. Don't you remember Friday evening hearing him complain of being sick? A. No, sir; I do not.

Q. Do you remember a question being asked you on cross-examination at the preliminary hearing, "What time of the evening was it that you say he was sick?" and your answer was that, "It was between 9 and 10 o'clock, I think"? A. I can't remember whether it was or not.

Q. Was that question asked you? A. I don't remember.

Q. Did you make that answer? A. I don't remember.

Q. Was the question asked you, "Where was he when you noticed that he was sick?" and did you answer, "He was sitting on a chair, near —"? A. I can't remember.

Q. What is the fact? Is it true or isn't it? A. I don't remember.

Q. Was the question asked you immediately following the last one, "Near the stove?" and was your answer, "Two or three yards away from the stove"? A. I don't understand.

Q. Was the question asked you, "Near the stove?" referring to where O'Neil was sitting, and was your answer, "Two or three yards away from the stove"? A. I don't remember.

Mr. KNOWLTON. Do these questions relate to Friday evening or Saturday evening?

Mr. DOWLIN. Friday evening.

Mr. KNOWLTON. Will you tell me what page of the record it is.

Mr. DOWLIN. I am reading from page 268 and 269 of the cross-examination.

Q. Was the question asked you, "What was the first thing that you noticed about him peculiar?" and was your answer, "I noticed him going out of the door"? A. I don't remember; it might have been so.

Q. And was the question asked you, "How did he go?" and was your answer, "Quite fast"?

Mr. KNOWLTON. I suppose this style of examination is in your Honor's discretion, but I object to it. Here is a whole page of questions and answers, and whether your Honors think this is an expeditious way of getting at that, is my ground for objection. I do not know whether I can object to this as a matter of law, but I ask your Honors' discretion as to whether it should go on or not. I will agree, to save time, that whatever may be in that record may be taken to be correct, — I don't care to have the witness to say it.

SHELDON, J. Do you care for anything more than that, Mr. Dowlin?

Mr. KNOWLTON. That is, correctly reported as to what was said at the time.

Mr. DOWLIN. I offer this for the purpose of —

SHELDON, J. Well, that is not the question. The Attorney-General says that he will agree that whatever is reported there is correctly reported. You have a much more expeditious and certain manner of showing it than the testimony of the witness.

Mr. DOWLIN. I desire to test the recollection of the witness.

SHELDON, J. Have you not tested it sufficiently with reference to these details, and is the testing of a witness by asking him about the details of a cross-examination, the length of which is uncertain, any very certain matter?

Mr. DOWLIN. I want to get at the facts.

SHELDON, J. Well, as I said, the record is the more expeditious method.

Mr. PARKHURST. I suppose, your Honor, we may put this in when we put in our case?

SHELDON, J. Anything that tends to contradict or vary the testimony of a witness, you may put in.

Mr. PARKHURST. Then we will put in so much of this record as is admitted as we desire when we put in our defence.

Mr. KNOWLTON. Of course you are not obliged to return the courtesy. Will you oblige us to prove this as to anything we want to put in?

Mr. PARKHURST. Certainly not, if you have the record.

Mr. KNOWLTON. We have duplicates.

SHELDON, J. Then you do not care to go further?

Mr. DOWLIN. I won't go further in that line; no. We will put it in when we put in our case.

Q. What did you see O'Neil doing before he showed you the money? A. He went out into the shed.

Q. Where was he when he showed you the money? A. In the pool room.

Q. What was he doing just before that? A. Came in and wanted to play pool.

Q. Had he been sitting down in a chair before that time? A. I don't remember.

Q. Had you had any conversation with him before that time? A. I don't remember.

Q. Had you heard anything said about money before that time? A. Not that I can remember.

Q. How is it, Mr. Haller, that you remember his words so exactly, and you cannot remember his actions? A. Because I remember what he said; I didn't take no notice of his actions.

Q. You noticed him around the pool room all that evening? A. I know that he was there.

Q. You can remember exactly what he said? A. I remember what he said about the money.

Q. You can't remember clearly what you said about his actions at another hearing? A. No, sir.

Q. Well, you can remember exactly what he said about the money? A. Yes.

Q. Where was the first place you saw him Saturday morning? A. Out in front of the hotel.

Q. Who were standing out there? A. Dubsey Woodward, Shaw, Irvin, Depledge and some more.

Q. How many in front of the hotel? A. I couldn't swear to that.

Q. Was it in front of the hotel, or in front of the bank? A. In front of the hotel.

Q. About 11 o'clock? A. About 10 o'clock.

Q. Later than 10 o'clock? A. It might have been.

Q. Did you consult any timepiece? A. No, sir.

Q. When was the last time before you saw him, that you saw the time of day by any timepiece? A. I went down street and looked into the hotel window.

Q. Was there any conversation going on there in front of the hotel? A. About finding the body of Mrs. McCloud.

Q. Who was talking? A. Mr. Irvin, Dr. Upton.

Q. Quite a crowd assembled there, wasn't there? A. Yes, sir.

Q. Did you hear different opinions expressed there? A. Not that I can remember.

Q. Did you hear different people speak about finding the body of Mrs. McCloud? A. I heard Jack.

Q. Oh, I asked if you heard different people. A. No, sir.

Q. Whom did you hear beside Jack speak about it? A. I don't know as I heard anybody speak about the finding.

Q. Whom did you hear speak about the body, about the death, or anything relating to it? A. Mr. Shaw.

Q. Who else? A. That is all I can remember.

Q. Dr. Upton? A. Dr. Upton.

Q. What did they say? A. They were talking.

Mr. KNOWLTON. Was that in O'Neil's presence?

Mr. DOWLIN. I understand O'Neil was there.

Mr. HAMMOND. Whether it was in O'Neil's presence?

THE COURT. It appears to have been part of the same conversation inquired about in chief.

THE WITNESS. Inquiring about sinking spells she was subject to.

Q. (by Mr. DOWLIN). Dr. Upton and Mr. Shaw were inquiring about the sinking spells she was subject to? A. And Mr. Irvin.

Q. Those three gentlemen were talking about those sinking spells she was subject to? A. What three?

Q. Dr. Upton, Mr. Irvin and Mr. Shaw. A. Mr. Shaw was not speaking about the sinking spells.

Q. Were Dr. Upton and Mr. Irvin talking about the sinking spells? A. Yes, sir.

Q. What did they say? A. I don't remember. Said she was subject to sinking spells.

Q. Who said it, — Dr. Upton? A. I don't remember which one said it.

Q. What else did they say besides she was subject to sinking spells? A. She might have wandered over the rocks there and fell down.

Q. Did they say from where they got their information? A. No, sir.

Q. Did you hear them say that anybody told them that? A. Not that I can remember.

Q. Did you hear anybody else in the crowd talk about it? A. Heard Mr. Shaw.

Q. What did Mr. Shaw say? A. He said he was up there when they helped carry her up to the house.

Q. Go on, and tell just what he said. A. He says that, — he don't believe she could have fell over there in a sinking spell.

Q. Go on, and tell what was said. A. I asked him where it was, and he says up near the big — near the big chestnut tree, I think it was.

Q. Well, did he express any other opinion how she got over there? A. Not that I can remember.

Q. But you heard Mr. Shaw express the opinion that he didn't believe she could have fallen over there in a sinking spell? A. Yes, sir.

Q. Well, did you hear anybody else say or express any opinion about how her body got there? A. Not that I can remember.

Q. It was general conversation, wasn't it? A. Yes, sir.

Q. A matter of speculation among those people assembled there, how her body got there, and they were talking over the theory of her death due to a sinking spell, then, weren't they? A. Yes, sir.

Q. Had you seen Mr. Peters that morning? A. No, sir.

Q. Had you seen Mr. Morrissey that morning? A. I don't remember.

Q. Had you seen Mr. Stone that morning? A. No, sir.

Q. Had you seen Den. Kendrick that morning? A. No, sir.

Q. Had you heard any other persons in the presence of O'Neil talking about this? A. No, sir.

Q. What did you say O'Neil said while standing there? A. I asked him what was the matter, and he says, they found Mrs. — Mr. Crittenden's daughter, dead, up in the woods. I asked him who, and he says, some — I forgot what it was — I don't remember what it was.

Q. Well, what else did you say to O'Neil, or what else did you hear O'Neil say? A. They found her up in the woods dead.

Q. Well, what else? Tell it just as you told it to the district attorney. Is that all you remember? A. She died in chills, — wandered over there and died in chills; that is what they said was the cause she died.

Q. What is the last part of your answer? A. Said they thought she wandered over there and died in chills.

Q. Did you add anything to that answer before? A. I don't remember.

SHELDON, J. He said that is what he thought she died of.

Q. And that was just what Dr. Upton and Mr. Irvin here were discussing? A. Yes, sir.

Q. So that he told you exactly what was being discussed among the people while you stood there? A. Well, I suppose he was.

Q. Where did you see him again that afternoon? A. Front of Jenks's shoe store.

Q. What time? A. About 1 o'clock.

Q. Had he any appearance of having been drinking at 1 o'clock? A. I don't remember as he had.

Q. Did you know where Dubsey Woodward was, or Charles Woodward, at 1 o'clock? A. I don't remember.

Q. Were you in your pool room before 1 o'clock? A. No, sir.

Q. How soon after 1 o'clock were you in your pool room? A. Might have been twenty minutes past 1 that I went over.

Q. Did you see on that visit to your pool room anything of Charles Woodward? A. No, sir.

Q. Were you in the pool room all that afternoon? A. No, sir.

Q. When was the next time that you were in your pool room? A. About half-past 2.

Q. Did you see anything of Charles Woodward or O'Neil in there at that time? A. Charles Woodward came in shortly afterwards.

Q. With O'Neil? A. No, sir.

Q. Did he stay there? A. No, sir; he stayed there about half an hour, then he got up and went out.

Q. Did you see anything of O'Neil after 1 o'clock? A. Yes, sir.

Q. Where? A. See him in front of Herring's.

Q. Did you hear O'Neil say anything at 1 o'clock in front of the shoe store? A. Yes, sir.

Q. Did you hear anybody else make any remarks in front of the shoe store at 1 o'clock? A. I think Mr. Amstein spoke to Mr. O'Neil.

Q. Did you hear any one else make any remarks? A. Not that I can remember.

Q. How many were there in front of the shoe store with O'Neil? A. Four or five.

Q. Any more than five? A. Might have been.

Q. Might have been ten or a dozen? A. Yes, sir.

Q. Do you remember of any that were there? A. Myself and Mr. Schontag, and O'Neil and Amstein.

Q. Any others? A. Not that I can remember.

Q. Did you hear any one talking besides O'Neil? A. Heard Mr. Amstein.

Q. Who else did you hear talking besides Mr. Amstein? A. I don't remember.

Q. Was there somebody else talking there? A. I don't remember.

Q. Was there anything else said there besides what O'Neil said? A. I don't remember whether there was or not.

Q. What did Mr. Amstein say? A. Mr. Amstein asked — O'Neil says, "She died in chills," and Mr. Amstein asked him if he heard what — came to any theory yet — and he says, he heard that she died in chills.

Q. Mr. Amstein asked O'Neil? A. Yes, sir.

Q. If he heard that they had come to any theory or conclusion or what? A. Conclusion.

Q. If they had come to any conclusion yet? A. Yes, sir.

Q. And O'Neil said that he heard she died in chills? A. Yes, sir.

Q. Did you hear any other talk? A. Not that I can remember.

Q. So what O'Neil said to Mr. Amstein wasn't any different from what you had heard Dr. Upton say in the morning front of the hotel? A. No, sir.

Q. It was a matter that was being discussed, — you had heard it in two places that day? A. Yes, sir.

Q. Had you heard it anywhere else? A. Not that I can remember.

Q. Was he drunk then? A. No, sir.

Q. Didn't have the appearance of having drunk anything, had he? A. Why, he might have had a drink; he wasn't drunk.

Q. You wouldn't have thought he would have had more than one drink, would you? A. I don't know whether he had more than one drink or not.

Q. Well, did he have the appearance of a man that had taken too much liquor? A. No, sir.

Q. He appeared quite sober and natural then? A. Yes, sir.

Q. Are you a drinking man yourself? A. Drink once in a while.

Q. Have you ever drunk with O'Neil? A. Yes, sir.

Q. Ever been with him when he got drunk? A. Oh, I have met him when he has been drunk.

Q. Did you ever drink with him? A. Yes, sir.

Q. Starting in drinking with him, and seeing him get intoxicated in your presence? A. No, sir.

Q. When did you see him again that afternoon? A. Saturday?

Q. Yes. A. About 6 o'clock.

Q. From 1 to 6 you did not see him? A. Saturday?

Q. Saturday. A. I saw him out there talking with Peters as I went up front of Herring's.

Q. What time was that? A. I don't know what time it was; before 6.

Q. How long was that after the time you saw him in front of the shoe store? A. Probably two hours; probably longer.

Q. You can't fix it definitely? A. No, sir.

Q. Did you hear what he said then? A. No, sir.

Q. Did you hear O'Neil make any remark from the time that you claim to have heard him in front of the shoe store until you saw him in the alley? A. No, sir.

Q. What was his condition when you saw him in the alley? A. Why, he was intoxicated, I thought.

Q. When you saw him stretched out there helpless in the alley, then you came to the conclusion he was intoxicated, did you? A. Yes.

Q. And not until then? A. No, sir; not when I saw him at 1 o'clock, I didn't think he was intoxicated.

Q. Did you hear him say anything in the alley? A. No, sir.

Q. Was he conscious, or unconscious, there in the alley? A. I don't know.

Q. Did you go home with him? A. I did not.

Q. Did you hear him say anything else? A. No, sir.

Q. Besides what you have stated? A. No, sir.

Q. Did he appear to talk any more unnaturally on Saturday than any one else? A. No, sir.

Q. Did he appear to be any more excited than any one else? A. No, sir.

Q. People generally were excited and talked freely there on Saturday, weren't they? A. Yes, sir.

Q. That is all.

Re-direct Examination.

Q. (by Mr. HAMMOND). How long was it after O'Neil came in and said that he had hurt his head by falling against the coal box that you saw William Shaw examining his head? A. Why, he walked right in; and he walked over to Shaw as quick as he got in.

Re-cross-examination.

Q. (by Mr. DOWLIN). Whether or not did you see John O'Neil on Friday night, January 8, sitting in a chair in the pool room, by the stove? A. Not that I can remember.

Q. Whether or not you heard him complaining, at the time he was sitting in that chair, of being sick? A. Not that I remember.

Q. Whether or not you saw him run out of the door to the coal shed? A. I don't remember.

WILLIAM H. SHAW — sworn.

Q. (by Mr. HAMMOND). Your full name? A. William H. Shaw.

Q. Where do you now live? A. In Holyoke.

Q. Where did you live in January last? A. Shelburne Falls, Buckland side.

Q. What is your employment? A. At that time?

Q. Now. A. I work at the power station for the street railway at Holyoke.

Q. How were you employed in January last? A. At the cutlery in Shelburne Falls.

Q. Whether or not you know John O'Neil? A. I do.

Q. Whether you saw him on Friday, January 8? A. I did.

Q. And where? A. Haller's pool room.

Q. What time? A. Between 1 and 3.

Q. State what occurred at that time. A. Not anything, that I know of.

Q. How long was he remaining there, to your knowledge? A. It seems as though he left there a little before 3.

Q. Did you see him again before supper? A. Not that I know of.

Q. Did you see him in the evening? A. I did.

Q. State when and where. A. About 8.30, at Haller's pool room.

Q. State, in your own words, all that you saw, and repeat all that you heard. A. All I saw was, he stuck his head in the door and told one of the boys a team was waiting for him to go to Buckland, — I think Ed Haller; I don't know as he entered the room at all.

Q. Go on and state. A. That was all; I suppose he went out, — I don't know.

Q. And did you see him again? A. Yes, sir.

Q. Well, how long afterwards? State the facts right along, please. A. About 10 o'clock, I believe, the nearest I can place it, he came into the pool room from the east side, took his hat off and asked me to feel of his head. I was sitting in a chair, and I felt of a big bump in there. I told him his head was full of slivers, so I told him to let

me look at it, and I got up in a chair and looked at it; I didn't find any slivers, though.

Q. Go on, and describe all your observations. A. Well, there was three or four ridges, ragged, more of a scrape than a cut; looked more like a scrape than a cut, sort of ragged. There was three or four little bits of flesh on there, and something gone, not a great deal, probably a quarter of an inch, and an inch long or three-quarters of an inch long.

Q. Describe the surface of it. A. Well, I told you the surface of it was ragged.

Q. As to moisture, whether it was fresh or dry? A. Well, slightly dry.

Q. As to whether there was any moisture appreciable to the hand or finger? A. I examined it and I got none on my hand.

Q. As to whether or not there was any other appearance of the surface that you now think of to describe? A. I cannot think of any.

Q. Can you remember as to whether he said anything as to the cause of that bump? A. I asked him how he done it. He told me he run up against the corner of the building.

Q. Did he tell you when? A. He didn't say when, but the manner he said it, I supposed he meant that it was just before he came in.

Q. Do you remember when he had left the room previous to that coming in? A. No, sir.

Q. Don't remember how long he had been out? A. I do not.

Q. Was there any appearance of blood or moisture on the wound at all? A. I couldn't see any.

Q. How late did you see O'Neil that evening? A. Well, I can't remember seeing him after that.

Q. Did you see him the next day? A. I did.

Q. When first? A. In the morning.

Q. Go on and tell all about that occasion. A. I just simply see him in front of Union Hall, I believe it was, in front of Merrick's store.

Q. When? A. Well, I should say it was just before dinner, probably 11 o'clock.

Q. Any others there? A. Well, there was others around, but I can't remember who they were.

Q. How many do you think were gathered around in that knot? A. Well, they wasn't gathered in a knot; they were separated all over the sidewalk. I don't know as there was any of them holding conversation with each other.

Q. Did you hear O'Neil say anything? A. Not at that time, that I remember.

Q. When next did you see him, if at all? A. Well, the next I see him was about half-past 2.

Q. Where? A. Between the bridge and the Thayer block.

Q. Who were there? A. Mr. Kennedy and myself.

Q. State what occurred there. A. I can't remember anything that occurred, only that as he walked up I says, "By God, Jack, I don't believe you can tell where you was last night."

Q. What did he say to that? A. He says, "By God, I can."

Mr. HAMMOND. Take it up.

Cross-examination.

Q. (by Mr. DOWLIN). How old are you? A. Twenty-two.

Q. Where did you say you were living now? A. Holyoke.

Q. When did you leave Shelburne? A. Some time in May; I can't just remember when.

Q. Where were you living in Shelburne prior to January 8? A. Where was I living?

Q. Yes, sir. A. I believe they call it Franklin Street.

Q. Where is that? A. Near the depot.

Q. As to the bridge? A. Franklin Street is near the depot, runs parallel with the railroad.

Q. That is on the Buckland side? A. Yes, sir.

Q. Do you live above the railroad crossing? A. Well, it is quite a step below the depot.

Q. And down below the depot, above the railroad crossing? A. Yes, sir.

Q. What time did you have supper that night? A. Shortly before 6.

Q. What time did you get through? A. It usually takes me about fifteen or twenty minutes.

Q. Where did you go after you ate your supper? A. To the barber shop.

Q. How long did you stay there? A. About ten minutes.

Q. About what time was it then? A. Somewhere about 6.30.

Q. Where did you go then? A. Pool room.

Q. How long did you stay in the pool room? A. Well, I stayed there till twenty-five minutes past 10, with the exception of a few minutes.

Q. When was that exception? A. Between half-past 7 and 8 o'clock.

Q. Where did you go then? A. To the post-office.

Q. How long were you out? A. Probably ten or fifteen minutes.

Q. Sure it wasn't longer? A. Yes, sir.

Q. Positive? A. Positive.

Q. What time did you reach the pool room after you left the barber shop? A. Probably half-past 6, twenty minutes to 7, — somewhere around there.

Q. Who was in the pool room when you went in there? A. Eddie Haller, and I think Eddie Smith.

Q. Who else? A. I can't recall any more names.

Q. Who was the first person you saw come into the pool room after you went in? A. I couldn't tell.

Q. Who was in there at 7 o'clock? A. Well, I think it must have been about that time that Adolph and Johnnie Haller came in.

Q. What did they do? A. I couldn't say.

Q. What did Johnnie do? A. I believe he started playing pool shortly after.

Q. Who was playing before he came in? A. Well, as near as I can remember, it was — well, I don't know of any one now, come to think of it.

Q. Was Eddie Haller — he is called Auction Haller, isn't he? A. Yes, sir.

Q. Was Eddie Haller playing with any one before Johnnie came in? A. It seems as though he was with Louis Vice.

Q. Who else was in there? A. I can't remember.

Q. Who was in there when you started to go out to the post-office? A. Well, that is probably the three Hallers there and myself, and I presume Vice was there; there was others there, but I can't recall them.

Q. Now, how many were there there? A. I couldn't say.

Q. Your best judgment? A. Well, probably ten.

Q. Are you a drinking man? A. I was not at that time; no, sir.

Q. Did you drink anything at that time? A. No, sir.

Q. Did you go to the mail with any one? A. I believe I went alone.

Q. Did you see any boys at the mail that were in the pool room? A. It seems as if I saw William Morrissey, but I won't swear that I did.

Q. Do you remember, then, of William Morrissey being in the pool room before you went to the mail? A. I think he was.

Q. Was Charles Woodward there? A. I couldn't say.

Q. Was Mr. Stemple there? A. I couldn't say as to that.

Q. Had you seen Stemple up to that time? A. Not that I remember.

Q. Did you see him after that time? A. Not that I remember.

Q. Was O'Neil in there? A. I didn't see him.

Q. Could you say whether he was there or not? A. I couldn't swear that he wasn't there.

Q. Do you remember William O'Connell being in there? A. No, I don't.

Q. When was the first time you saw O'Neil? A. I think about 8.30, — that is, in the evening.

Q. What was he doing? A. He was just simply — put his head in the door and called for some one of the boys; told them there was a team waiting for them.

Q. Did you hear anything else then? A. Not at that time.

Q. Did you see anybody go out? A. I can't say that I did.

Q. When did you see O'Neil come into the pool room? A. About 10 o'clock, as near as I can remember.

Q. The first time you saw O'Neil come into the pool room was about 10 o'clock, was it? A. That is the first time that I remember seeing him.

Q. Do you remember his coming into the pool room before, and going out with any one? A. I don't.

Q. Do you remember William Morrissey's going out? A. No, I don't.

Q. Do you remember Charles Woodward's going out? A. I don't.

Q. Do you remember Adolph Haller's going out? A. I don't.

Q. Do you remember Eddie Haller going out? A. I don't believe I do.

Q. What were you doing there? A. I was keeping tally for Johnnie Haller and Louis Vice while they were playing a game of rotation pool.

Q. Oh, you were engaged keeping tally? A. Yes, sir.

Q. Where were you standing in the pool room, on the east side, north side or on what side of it? A. South side.

Q. South side? A. Yes, sir.

Q. Was your back towards the door? A. Well, partly toward the west side door.

Q. You could see the east side door? A. Yes, sir.

Q. Did you notice who came in and went out the east side door? A. I didn't pay any attention to them.

Q. Did you notice whether Morrissey came in the east side door? A. I did not.

Q. Or Woodward? A. I did not.

Q. Or Haller? A. I did not.

Q. Or whether they went out of it or not? A. I did not.

Q. They could have passed in and out there a dozen times, and you not have noticed it? A. Could for all I remember of it.

Q. So it was 10 o'clock the first time your attention was called to O'Neil's being in the pool room? A. Yes, sir.

Q. And that was when he complained to you of his head being hurt, was it? A. Yes, sir.

Q. You had not spoken to him before? A. Not that I know of.

Q. There hadn't a word of conversation passed between you? A. Not that I know of.

Q. You hadn't seen him with anybody? A. Not that I know of.

Q. And he came right in there and walked right up to you and asked you to look at his head? A. He asked me to feel of his head.

Q. How did he appear when he asked you to feel of his head? A. Oh, ordinarily, laughing.

Q. Anything frightened? A. Didn't appear so.

Q. Anything scared? A. Didn't seem so.

Q. Anything unusual about it? A. Nothing unusual, only he had his head hurt, and that wasn't very unusual.

Q. Did you ever know of his having his head hurt before? A. I think I have.

Q. When? A. I cannot place the time.

Q. Where? A. I can't place the place.

Q. How? A. I don't know.

Q. Well, how do you know he ever had it hurt before? A. Well, because I can tell you of times when he has had his head hurt, and told me he bumped his head or something.

Q. Tell me of some of them. A. Well, in a foot-ball game.

Q. Ever know of his falling down and hurting his head before? A. I don't know as he fell down and hurt it.

Q. Did you ever see him with any bruises on his head before? A. I can't say I saw any bruises on his head before; no, sir.

Q. Was he drunk? A. I couldn't say that he was.

Q. Was he sober? A. I couldn't say that he was sober.

Q. What condition was he in? A. Well, I thought he had been drinking.

Q. Partially intoxicated? A. Perhaps so.

Q. How would you have it? A. I would have it he had been drinking.

Q. The drink have any influence on his actions? A. Somewhat, yes.

Q. That is the way you knew it? You hadn't seen him drink anything? A. No, sir.

Q. See any bottles in his pocket, or anything? A. I did not.

Q. Now, tell me just how that wound was after you looked at it, just how you found it, just as you saw it then. A. Well, it was as I said, three-quarters of an inch long, or an inch, quarter of an inch wide; ragged; looked more like a scrape than a cut; three or four

little bits of flesh on there, — I pulled one of them off ; I thought them slivers by feeling of it, but when I looked at it, saw they were not ; I pulled one of them off. Blood was a little there around it, or in the cut. There was no blood around the cut that I know of ; was in the cut. That is all I know of.

Q. Did you testify at the preliminary hearing? A. Did I?

Q. Yes, sir. A. Yes, sir.

Q. Did you testify there that you saw no blood on the cut? A. No, sir.

Q. Did you testify there that it was a cut? A. I believe I testified it was a cut, or more of a scrape than cut, — the same as I do now.

Q. Didn't you testify there that it appeared to you that it appeared to be a fresh scrape or cut? A. No, sir.

Q. Did you testify that it appeared to be an old one? A. No, sir.

Q. You did not examine it very carefully, did you? A. Well, carefully enough to satisfy myself.

Q. Didn't think it needed any attention, did you? A. I did not.

Q. When was the first time your attention was called to it after that Friday night? A. By some one calling my attention to it, you mean?

Q. Yes, when was the first time your attention was called to the fact that you examined that cut after Friday night? A. Well, by any other person than myself, it was at the inquest at Shelburne Falls.

Q. Did you see O'Neil do anything after you examined the cut? A. Not that I remember.

Q. Did you hear him say anything in there after you examined the cut? A. Not that I remember.

Q. Did you hear him talking with any one there before or after you examined the cut? A. I can't say that I did.

Q. Did you see him doing anything there? A. I can't say as I did.

Q. Did you see him showing anything there? A. Yes, sir ; I did.

Q. Did you hear him say anything there in the pool room? A. Yes, I did ; now I come to think of it.

Q. When was it? A. I believe it was shortly after I looked at his head.

Q. When was that? Shortly after you looked at his head? A. Yes, sir.

Q. After 10 o'clock, was it? A. Yes, sir.

Q. How do you know it was 10 o'clock? A. I didn't say it was 10 o'clock. I said I thought it was about 10 o'clock.

Q. How do you know it was about 10 o'clock? A. Because I started for home shortly after.

Q. When did you commence to keep tally on the pool games? A. About half-past 7.

Q. How many pool games had they played when you examined the cut on O'Neil's head? A. I couldn't say.

Q. How many games had they played after you examined the cut on O'Neil's head? A. I couldn't say.

Q. How many games did they play in all? A. Twenty-three.

Q. At what time did they stop? A. I should say about quarter or twenty minutes past 10.

Q. And at the time you examined the cut on O'Neil's head, they were nearly through? A. Very near.

Q. How many games, to your best judgment, had they played? A. Well, probably nineteen or twenty games at that time; probably not quite so many.

Q. You hadn't seen anything of O'Neil before that time, except when he called that man out of the pool room? A. Not that I remember.

Q. Were you working the next day? A. No, sir.

Q. What time did you go down town the next Saturday morning? A. About 10 o'clock, I should think.

Q. Who was the first person you talked with Saturday morning after coming down town? A. I can't say who I talked with after I came down town; I remember talking with a man at the depot.

Q. Where was the first place that you heard of Mrs. McCloud's death? A. At the depot.

Q. Around the depot? A. At the depot.

Q. How far is the depot from your home? A. About the same distance as it is from the depot to the crossing.

Q. A minute's walk? A. Not over that.

Q. What time did you leave your home? A. About 10.

Q. So the first place that you heard of the death of Mrs. McCloud was at the depot, about 10 o'clock? A. Yes, sir.

Q. What did you hear? A. I just simply heard they had found Mrs. McCloud by the road side, dead.

Q. Where was the first place you saw O'Neil after you came down town? A. The first place I saw O'Neil after I came down town that I remember was near the Union Hall block in front of Merrick's store.

Q. Where is the Union Hall block? A. On the left-hand side after you cross the bridge, — the second block.

Q. On Bridge Street. Well, that is the block that the bank is in? A. Well, no; it is this side of the bank.

Q. What was he doing there? A. Just simply standing round.

Q. Who was there? A. I can't tell of any one that was there besides him.

Q. How many were there there? A. Oh, perhaps ten.

Q. And you can't tell a single person? A. Only O'Neil and myself.

Q. Did you hear anybody talk there besides O'Neil? A. I did not.

Q. What were the ten or a dozen persons standing around there doing? A. I don't know; I was not standing with them.

Q. How long did you stand there? A. Probably ten or fifteen minutes.

Q. And never heard a word of conversation while you stood there? A. I can't say that I did.

Q. All stood there silent? A. I don't know as they did stand there silent.

Q. What did O'Neil say? A. Not anything, that I know of.

Q. What did he say to you? A. Not anything, that I know of.

Q. You didn't hear a word said there at that time? A. I can't say that I did.

Q. Did you hear the fact of Mrs. McCloud's death at that time? A. No, sir.

Q. Was Dr. Upton standing there? A. Not that I know of.

Q. Was Mr. Irving standing there? A. Not that I know of.

Q. Where was the next place you saw O'Neil? A. The next place I remember of seeing O'Neil was between the Thayer block and the bridge.

Q. What time was that? A. About 2.30.

Q. To whom had you talked after you left him the first time, until you met him the second time? A. Who had I talked with?

Q. Yes. A. I can't say with any one, unless my mother.

Q. Had you been home? A. Certainly, to dinner.

Q. Oh, to dinner. Had you heard anybody talking about the death of Mrs. McCloud besides your mother? A. Not that I can remember, and it seems as though I did, but I can't remember who.

Q. What did you hear was the reason of her death? A. Well, the opinion seemed to be going round that she had been murdered; that is all any one seemed to know.

Q. When did you see O'Neil? A. Two-thirty.

Q. Whereabouts? A. Between the Thayer block and the bridge.

Q. Did you talk with anybody about O'Neil? A. Not that I can remember, unless it was with Mr. Kennedy about his having money.

Q. And 2.30 was the first time you saw him? A. After seeing him about 11.

Q. Were there a good many people around there then? A. At 2.30 I was with Mr. Kennedy when he crossed the road.

Q. And all the conversation you had was just what you have stated here, is it? A. That is about all, I believe.

Q. Did you hear anybody else talking there at that time? A. No one but Mr. Kennedy.

Q. Who else stood in the crowd? A. No one but only Kennedy and I.

Q. The conversation that you had was all that passed between you? A. Yes, sir.

Mr. DOWLIN. That is all.

Mr. HAMMOND. That is all.

CHRISTIAN FRITZ — *sworn*.

Q. (by Mr. HAMMOND). Your name? A. Christian Fritz.

Q. Where do you live? A. Shelburne Falls.

Q. Where were you on Friday, January 8 last? A. Haller's pool room.

Q. What hour did you go to the pool room? A. Between 8 and 9.

Q. While you were there, whether you saw John O'Neil? A. Yes, sir.

Q. State your first observation of him? A. Well, he come in the pool room and wanted to play a game of pool with somebody; there wouldn't no one play.

Q. State all that he did and said. A. Well, he come in and said, — we was in there, and I sat in a chair side of Haller, and he pulled out some money out of his pocket, and said he would play somebody pool.

Q. Speak louder. A. He come in there and wanted to play a game of pool; nobody seemed to wish to play with him, and he stepped up to Haller and put his hand in his pocket and pulled out some money.

Q. Go on. A. I don't know how much money he had; it was two bills; he pulled it out, — he kind o' pulled it apart; I didn't take notice what it was.

Q. What, if anything, did he say? A. He said something about he had the money.

Q. That he had the money? A. Yes, sir.

Q. Go on. What next? A. I don't remember hearing him say anything else.

Q. How late did you remain in the pool room? A. Somewhere around 10 o'clock, a little after.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Who was playing pool when he came in? A. I don't know.

Q. Was the table being used when he came in? A. I think it was.

- Q. What was Eddie Haller doing? A. Sitting in a chair.
- Q. Did O'Neil appear as though he had been drinking? A. I don't remember; he might have had a little in.
- Q. Did you see him drink anything that night? A. I did not.
- Q. How long had he been in the pool room when he offered to play pool? A. It was when he first come in.
- Q. When did he first come in there? A. Between 8 and 9.
- Q. When was the first time you saw him? A. That is the first time I see him, to my remembrance.
- Q. When he came in? A. Yes, sir.
- Q. Did anybody else come in with him? A. I don't remember.
- Q. Did you see anybody else around with him? A. I did not, not that time.
- Q. Came in alone, then? A. I think he did.
- Q. What time was it? A. Between 8 and 9 when he come in the pool room.
- Q. How long was he in there before he talked with Haller? A. I don't know how long it was.
- Q. An hour? A. No, sir; I don't think it was.
- Q. Well, the best of your judgment? A. Oh, probably five or ten minutes, probably; I didn't look to see.
- Q. A half hour? A. I don't think it was.
- Q. You have no way of telling? A. No, sir.
- Q. Did you see him when he came through the door? A. I see him after he come in there, the first I noticed him.
- Q. Which side of the room was he on when you first noticed him?
- A. On the right-hand side, as you go in the door.
- Q. East or west side? A. East side.
- Q. On the east side? A. Yes, sir.
- Q. Did you notice him before at the west side? A. I did not.
- Q. Did you hear him call anybody out? A. No, sir.
- Q. You had been in that pool room right along? A. I was in there from about twenty minutes to 7.
- Q. Did you go out to the post-office? A. I did.
- Q. How long were you out at the post-office? A. I don't know how long I was out.
- Q. What time did you come back? A. I didn't look at the clock to see what time it was.
- Q. To your best judgment, how long were you out to the post-office? A. Probably fifteen minutes.
- Q. What time did you go out? A. About half-past 7.
- Q. Before or after half-past 7? A. I didn't look; I should judge it was about that time that I went out.
- Q. Did you see William O'Connell in there that night? A. No, sir.

Q. Did you see Morrissey in there that night? A. I don't remember.

Q. Did you see either of the Morrisseys in there that night? A. I don't remember.

Q. You know the two Morrisseys? A. I do.

Q. Did you see Stemple in there that night? A. I think he was in there; I wouldn't say he was.

Q. Not what they say. Did you see him? A. I don't remember.

Q. See Charles Woodward in there that night? A. I don't remember seeing him.

Q. Did you see Charles Woodward and Morrissey go out together? A. No, I did not.

Q. Did you see Haller go out? A. I see him go out once.

Q. With whom? A. I don't remember who it was with.

Q. Did you hear any conversation between Haller and O'Neil, — I mean Adolph Haller? A. No, I did not.

Q. What were you doing there? A. Sitting down smoking my pipe.

Q. What was your attention occupied with? A. Watching them play pool.

Q. You were watching the game? A. Yes, sir, I was.

Q. You didn't pay any attention to what was going on around you? A. No, not hardly.

Q. So that O'Neil might have been in there half a dozen times before you saw him, and you not have known it? A. Probably he would; but it was the first I see him come in.

Q. That was the first your attention was called to him, you mean? A. It was.

Q. These other gentlemen that were in there, you don't remember seeing them? A. Well, there was so many of them in there, I didn't keep the track who it was.

Q. Could O'Neil have been in there and you not have seen him? A. Probably he would.

Q. The same as the others? A. I shouldn't wonder.

Q. But the first time your attention was called to him was when you say you saw him exhibit some money? A. Yes, sir; when I see him come in the door.

Q. But the pool table was engaged? A. There was somebody playing.

Q. Who was playing? A. I couldn't tell you.

Q. You were watching the game, you said? A. Yes, but I don't remember who was playing.

Q. What kind of a game were they playing? A. I couldn't tell you whether they were playing rotation or straight pool.

Q. Were you interested in the game? A. Well, not much.

Q. What were you interested in doing that evening? A. Well, more interested in my pipe at that time.

Q. So you don't know what kind of a game they were playing, you don't know who was playing? A. No, sir; I don't.

Q. But you were watching the game, and you don't remember seeing O'Neil there until he offered to play pool with Haller? A. That is the first time I remember seeing him in there.

Q. Where was Eddie Haller sitting in the room? A. He was sitting right on the right-hand side of me.

Q. Whereabouts in the room? A. It was on the north side.

Q. And the first thing you saw of O'Neil, he was standing somewhere near Haller, wanting to play pool with him? A. Yes, sir; when he came in the door, the first I see of him.

THOMAS GLASSETT — *sworn*.

Q. (by Mr. HAMMOND). You live in Shelburne Falls? A. Yes, sir.

Q. Did you see John O'Neil on Friday, January 8? A. Yes, sir.

Q. What time first? A. Shortly after 12 o'clock.

Q. Where, and what was he doing? A. In front of the Odd Fellows' building, standing there.

Q. Talk with him? A. He spoke to me; yes, sir.

Q. Have any particular conversation? A. No, sir; just asked what I was doing down at the shop.

Q. See him again? A. That night, at 11 o'clock.

Q. Where? A. In front of Joyce's shoe store, Shelburne side.

Q. State all that occurred there. A. All that occurred there, Morrissey was coming across the road from Shelburne Falls House, and there was a pint when I got there, and was passed around; that is about all.

Q. Who was there? A. Morrissey, Woodward, Haller, O'Neil and myself.

Q. Hear any mention as to money or change? A. Yes, sir; heard them say they got the money to the Woodward House.

Q. Hear any mention of the amount of change brought back? A. Yes, sir; heard it was four dollars and a half.

Q. Did Woodward tell you anything, in O'Neil's presence and hearing, about that money? A. He spoke about getting it at the Woodward House; he was not talking to me direct.

Q. State what he said. A. He said how O'Neil got the money at the Woodward House through a mistake in change.

Q. State what else. A. That is about all I understood, — that he got the money through a mistake in change.

Q. Did he give the details? A. Not that I remember; he did not.

Q. Had you seen O'Neil from time to time in the previous ten days? A. No, sir, I had not; I saw him from time to time the Monday before.

Q. You saw him on the Monday before? A. I saw him all that week from Monday.

Q. How many times did you see him during the week? A. I couldn't tell you.

Q. Nearly every day? A. I saw him every day up to Friday; I didn't see him Saturday.

Q. Where did you meet him? A. Well, different places.

Q. Did you see him have any money during that week? A. I did.

Q. What day? A. I couldn't say; either Wednesday or Thursday.

Q. What was it? A. Well, he had forty cents.

Q. State all you can about that, and what O'Neil said. A. Well, all I know about it, he played four games of pool, and got stuck four games, — cost ten cents a game; that is all I know.

Q. You say he had forty cents. How do you know? A. Saw it.

Q. Saw it that day? A. He spent it playing pool.

Q. Whether he made any remark after he played? A. He might have; I don't remember.

Q. Whether you have remembered a while ago? Whether he said he was busted and felt better? A. He might have made that remark.

Q. If you will refresh your recollection, and say.

Mr. BEER. That is objected to.

SHELDON, J. If the witness has said he cannot remember, he may be inquired of as to particulars.

Mr. BEER. He was asked if he ever did remember.

SHELDON, J. To refresh his memory, he may be asked that.

Mr. BEER. He said he does not know whether he did or not remember at any other time.

SHELDON, J. Now he is asked to refresh his memory, and answer the question.

Q. (by Mr. HAMMOND). Now, Mr. Witness, haven't you said that he said, after he paid the forty cents, he was busted and felt better? A. I shouldn't wonder if I had said that.

Q. Isn't it true? A. I guess it is, come to think it over; something of the kind he said.

Q. Were you present when O'Neil fell in the alley Saturday night? A. I was there after he fell.

Q. Did you hear him make any remark? A. No, sir; I didn't stop there, — walked right by.

Q. During all that week did you know of his having any other money than this forty cents? A. No, sir.

Q. During all that week did you hear of his having any other money than this forty cents? A. No, sir.

Cross-examination.

Q. (by Mr. BEER). Where did you live at that time? A. Where did I live?

Q. Yes, sir. A. I was in Shelburne Falls, Buckland side.

Q. What street? A. Clement Street.

Q. Did you go to the pool room? A. What time?

Q. In the evening. A. Friday evening?

Q. Yes. A. Yes, sir.

Q. What time? A. Well, I should say about half-past 9 I went to the pool room.

Q. Was that the first time you had been in the pool room? A. That day; yes, sir.

Q. Where did you come from when you first saw O'Neil? A. I came from the shop, — cutlery.

Q. And where was it you saw him? A. In front of Joyce's shoe store.

Q. Who were with him? A. Haller, Morrissey and Woodward.

Q. You testified at the preliminary hearing, didn't you? A. Yes, sir.

Q. And you were asked, weren't you, whether there was any talk between you and Woodward in O'Neil's hearing, at that time? A. I believe I was.

Q. And your answer was, "Not that I remember of." A. Might have been; I don't remember now.

Q. And you were asked at the same time, weren't you, "At any time that evening did you have any talk with Woodward, in O'Neil's hearing, about money"? A. Yes, sir.

Q. And your answer was, "I don't think so; no, sir," — wasn't that so? A. Might have been; I don't remember now.

Q. And weren't you asked this also, —

SHELDON, J. Do you care, Mr. Beer, to ask him these specific questions and answers? It has been agreed that this record is a correct report of the testimony, and you can put in anything of course hereafter.

Mr. BEER. Well, this seems the most expeditious way, quickest way, on cross-examination, to put in the facts.

SHELDON, J. If it is your wish, you may put the question.

Q. "Will you cast your reflection back as well as you can about that and see if you are right"? You were asked that question,

weren't you? And your answer, "Well, I don't know. Woodward might have spoken to me about this, but I don't remember of it." Wasn't that so? A. I believe I answered that way; yes, sir.

Q. And you testified this when? How soon after the homicide?
A. How soon after?

Q. Yes. A. I don't know now how soon after it was.

Q. Was it in January? A. That I testified to this?

Q. Yes. A. I don't know.

Q. Whatever you did testify to was true, of course? A. I suppose so; yes, sir.

Q. Has anything occurred since to refresh your memory as to what happened as to any particulars of your testimony? A. I can remember the words of O'Neil talking about where Woodward got the money, and where he got it.

Q. When did you first remember that after the preliminary examination? A. I remembered it right after I got out of doors.

Q. How came you to recollect it? A. Because I was thinking it over.

Q. Anybody talk with you about it? A. No, sir.

Q. You were present at the inquest, weren't you? A. Yes, sir.

Q. Were you at both private inquests? A. Yes, sir.

Q. They were private inquests, weren't they? A. I suppose so.

Q. Did you go into the pool room after seeing O'Neil, Woodward and the other men? A. I did.

Q. How long did you stay there? A. In the pool room?

Q. Yes. A. Oh, twenty minutes.

Q. Twenty minutes? A. I should say so, about that; I wouldn't swear twenty minutes, — somewhere about that time.

Q. Can you tell the time you went to the pool room? A. No, sir; I cannot.

Q. Can you tell who were there? A. Tell part of them.

Q. Please state. A. There was Morrissey, Woodward, O'Neil, Shaw, myself and Edward Haller, the person taking care of the pool room.

Q. What were they doing? A. Oh, they were sitting down and walking around there.

Q. Anybody playing? A. No, sir.

Q. Anybody drinking? A. Not in the pool room, they were not.

Q. Did you see any drinking? A. In the pool room?

Q. Anywhere. A. They were drinking outside of the pool room.

Q. Who were? A. Haller, Morrissey and Woodward.

Q. Which Haller? A. Adolph.

Q. Were you outside? A. I was.

Q. Were you drinking? A. I did.

Q. What were you drinking? A. Whiskey.

Q. Was it in a bottle? A. Yes, sir.

Q. Where did you go from to go and drink whiskey? A. Please repeat the question.

Q. Where did you go from to go and drink whiskey? A. I went out of the pool room, out back of the coal shed.

Q. Did all you people go out of the pool room when you drank? A. They all went out at different times; I couldn't say they all went out together.

Q. Do you remember who went out first? A. No, sir; I don't.

Q. Have you stated all the persons who went and drank, to your knowledge? A. I believe I have, all that I can remember now.

Q. Did you return to the pool room after drinking? A. Yes, sir.

Q. How long did you stay there after that? A. Probably ten or fifteen minutes.

Q. And did all these people go into the pool room again? A. I believe so.

Q. Did you leave them in the pool room? A. Yes, sir.

Q. All of them? A. All but Shaw.

Q. What time did Shaw depart? A. I don't know; I couldn't swear what time it was.

Q. Did Shaw participate in the drink? A. I don't believe he did.

Q. What was Shaw doing when you were in the pool room at any time? A. He wasn't doing any more than the rest of us; sitting down and walking around there, I suppose.

Q. You saw no one playing pool or any game during any time you were there? A. No, sir.

Q. And all that departed was Shaw? A. Shaw and myself.

Q. Did you both leave together? A. Yes, sir.

Q. Please repeat the time that you saw O'Neil in front of Joyce's shoe store. A. It was shortly after 9 o'clock when I first met him there.

LOUIS VICE — sworn.

Q. (by Mr. HAMMOND). What is your name? A. Louis Vice.

Q. Where did you live in January last? A. Shelburne Falls.

Q. Whether or not you were at Haller's pool room Friday evening? A. I was.

Q. At what hour did you go there? A. The first time I went there I think was between half-past 6 and 7.

Q. Did you remain there continuously? A. No, sir; I did not.

Q. When did you go away? A. About mail time.

Q. And when was that? A. Well, I couldn't say just positive just what time.

Q. About what time did you go away? A. Well, between quarter-past and half-past 7, I should judge.

Q. Where did you go? A. I went to the mail.

Q. Then where? A. To my father's store.

Q. Then where? A. Then back to the pool room.

Q. What time did you return? A. Well, before 8 o'clock, or probably 8 o'clock.

Q. Did you remain in the pool room some time? A. I did.

Q. How long? A. Well, probably an hour, or an hour and a half.

Q. Did you see the defendant there at that time? A. Yes, sir.

Q. When first did you see him there? A. I should judge between half-past 8 and 9 o'clock.

Q. State what you saw of him. A. Well, the first I saw of him was, he wanted to play me a game of pool for a dollar a game; I told him I didn't wish to play with him, as I knew he could beat me.

Q. Go on and state all that occurred. A. Well, that was all that was said between he and myself, and afterwards I judged from the appearance of what people were saying around there that he pulled out money, and some one —

Mr. BEER. We object.

SHELDON, J. It is only what you saw.

THE WITNESS. That was all I saw.

Q. State what was said in O'Neil's presence in reference to money.

A. He pulled out money, and some one said it was counterfeit or confederate.

Mr. BEER. No matter —

SHELDON, J. This is what he heard said in O'Neil's presence; that is competent.

Q. Go on. A. And he says, "It ain't, is it, Auction?" And that is all I heard of the money question.

Q. How long did you remain after that? A. Well, I couldn't just positively tell how long I did remain.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Who did you hear say that he pulled out money? A. I don't know who it was.

Q. When did you first hear any one say that he pulled out money?

A. When I was playing pool.

Q. When you heard somebody say that he pulled out money did you see O'Neil there? A. Yes, sir; I saw O'Neil.

SHELDON, J. Speak louder, Mr. Witness.

Q. How loud was it said? A. Well, I couldn't say positively how loud it was said; it was loud enough so that I could hear it.

Q. How far were you from O'Neil when it was said? A. I was on the same side of the pool table, the north side.

Q. What is it you say was said? A. Somebody said it was confederate, it came from Swan, and he says, "It ain't, is it, Auction?"

Q. How did you know it referred to money? A. Well, I know from the way they said it. They said it was confederate or counterfeit, and he said, "It ain't, is it, Auction?"

Q. Did you see him pull it out? A. No, sir; I did not.

Q. You didn't see him have any money? A. No, sir; I didn't see any money on his person.

Q. Didn't see him show any money? A. No, sir; my attention was on my game.

Q. And you heard somebody say it was counterfeit? A. Yes, sir; that it was counterfeit or confederate, I couldn't say which.

Q. And you heard O'Neil say, "It isn't, is it, Auction"? A. Yes, sir.

Q. You didn't know that it was money that they were talking about? A. Why, it must have been.

Q. At that time? A. Why, no, I didn't know it was money they were talking about; I never heard of anything else that was counterfeit or confederate only money.

Q. Did you see at the time that it was money that they were talking about? A. No, sir.

Q. Did you see to what they referred? A. No, sir.

Q. Did you know until after O'Neil was arrested to what they referred? A. No, sir.

Q. Did you know until somebody brought it to your attention, that O'Neil, after he was arrested, showed money in there, to what this conversation referred? A. No, sir.

Q. Then, of your own knowledge, you don't know what O'Neil meant? A. No, sir; I don't know, only —

Q. You don't know of your own knowledge what, whoever said that it was confederate or that it was counterfeit, what they meant? A. No, sir; but I should judge —

Mr. DOWLIN. No matter what you should judge.

Mr. HAMMOND. I pray your Honors' judgment.

SHELDON, J. He has answered the question, and said no. The other was only a reiteration of his belief, which I do not think is important.

Q. Had O'Neil been drinking? A. I should say he had from the appearance.

Q. Feeling pretty good? A. I should judge so.

Q. About what time do you say it was? A. I should judge between half-past 8 and 9 o'clock.

Q. Had you seen him in there before? A. No, sir.

Q. Did you see him at the doorway before? A. No, sir.

Q. Did you hear him talking or speaking with any one before? A. No, sir.

Q. He might have been in there before? A. He might have, for all that I know about it.

Q. Could you tell all the persons that were in there? A. No, sir; I could not.

Q. How many could you tell that were in there? A. There were three, besides the Mr. Haller that I was playing pool with.

Q. That is all that you remember? A. That is all that I remember.

Q. And if O'Neil had not spoken to you about playing pool — A. — I probably would never have noticed him.

Q. So that until, up to the time that he spoke to you about playing pool, you didn't notice who was in the pool room at all? A. No, sir.

Q. Didn't pay any attention to whether he was there or not? A. No, sir.

Q. Now, as to the time, how do you fix the time? A. Well, I probably got back there at 8 o'clock; I was there quite a little time before I saw him.

Q. How many games had you played? A. I don't know.

Q. Was there any one keeping score for you? A. Yes, sir.

Q. Had they told you how many games you had played? A. They had at the end, I believe.

Q. When? A. At the end, when we had finished.

Q. Oh, at the end, when you had finished. You say you got back about 8 o'clock? A. Yes, sir.

Q. You consulted no timepiece? A. No.

Q. You heard no one say anything about the time? A. No, sir.

Q. And you played some time? A. Yes, sir.

Q. You hadn't paid any attention to how many games you had played? A. No, sir.

Q. You don't know much about what time it was, do you? A. No, sir.

Q. Not positive at all, are you? A. Well, I know it was between 8 and 9 o'clock.

Q. How do you know it was between 8 and 9 o'clock? A. Because I was playing between 8 and 9 o'clock.

Q. Didn't you play after 9 o'clock? A. Yes, sir; I did.

Q. Well, wasn't you playing between 8 and 9 and until after 9? A. Yes, sir.

Q. How do you know it was between 8 and 9 o'clock? You said you didn't consult any timepiece there. A. That I saw O'Neil, do you mean?

Q. Yes, sir. A. Well, after I saw O'Neil, after he had spoken to me, I heard the 9 o'clock bell very shortly afterwards.

Q. Very soon afterwards, how long afterwards? A. I couldn't tell.

Q. Five minutes afterwards? A. I can't tell.

Q. So it was about 9 o'clock? A. Yes, sir; between half-past 8 and 9.

Q. After O'Neil wanted to play pool with you for a dollar a game, how long was it before you heard conversation relating to what you have testified? A. Very shortly.

Q. That is all.

FRANK STEMPLE — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Frank Stemple.

Q. Where do you live? A. Shelburne Falls.

Q. Whether or not you were in Haller's pool room on Friday, January 8? A. I was.

Q. At what time? A. Twenty minutes past 8.

Q. When first did you go in there? A. I mean twenty minutes past 7.

Q. For how long a time did you remain? A. I remained till 10 o'clock.

Q. Whether or not you know the defendant, John O'Neil? A. Yes, sir; I do.

Q. Whether or not you saw him there that evening? A. Yes, sir.

Q. When first? A. Half-past 8.

Q. State what you saw of him, what he said and did. State the first thing you recollect about John O'Neil that night. A. He sat there inside the corner there.

Q. Speak so these people can hear. A. He came in and called out Auction Haller.

Q. What did he say? A. He said he wanted Auction Haller to come out.

Q. What then? Did he come into the pool room at that time? A. He came into the pool room at twenty minutes past 8.

Q. At the time he called Haller, did he come into the pool room, or to the door? A. He came into the door, — stuck his head into the door.

Q. Half-past 8. When next did you see him, if at all? A. Half-past 9, I should think, again.

Q. Where did you see him at half-past 9? A. In the pool room.

Q. Did you see him do anything or hear him say anything? A. I saw him pull out some money.

Q. Describe it now to the jury. A. I saw him pull out some money and show it to Eddie Haller.

State the conversation. A. Then he wanted to play with Louis
game of pool for a dollar.

Did you see him doing anything? A. No, sir.

At the time he offered to play with Louis Vice for a dollar?
saw him have a dollar, waving it in his hand, — I mean I saw
have some money in his hand, waving it.

Where was he with reference to yourself? Was he near you?
He was the opposite side of me.

Q. What were you doing? A. Sitting down.

Q. To what was your attention directed? A. Watching them play
pool.

Q. Who were playing? A. Louis Vice and Johnnie Haller.

Q. How long did you remain there? A. Till 10 o'clock.

Cross-examination.

Q. (by Mr. BEER). Where do you live, or where did you live
then? A. Shelburne Falls.

Q. On what street? A. River Street.

Q. Have you ever seen that map behind you before? A. Yes, sir;
I live right there [showing].

Q. Did you point out the house? I didn't see you point. Where
do you live? A. [Shows.]

Q. In that building? A. No, on that street.

Q. And this you call River Street? A. I call that River Street.

Q. Marked here as Water Street, is that it? A. Yes, sir.

Q. What time did you leave your house that night? A. Half-
past — quarter-past 7.

Q. How do you know it was that? A. Because I looked at the
clock.

Q. You looked at the clock in your house, did you? A. Yes,
sir.

Q. Did anybody leave the house with you? A. No, sir.

Q. Have you a brother? A. Yes, sir.

Q. What is his name? A. Eddie Stemple.

Q. Have you a brother called Julius? A. No, sir.

Q. How many brothers have you? A. Two.

Q. What is the other's name? A. Willie, Eddie.

Q. Willie and Eddie? A. Yes, sir.

Q. Those are the names? A. Willie Stemple and Eddie Stemple.

Q. Was either of those in the pool room when you entered? A.
Who?

Q. Either of your brothers? A. No, sir.

Q. Did either of them come in there while you were in there? A.
No, sir.

Q. Where did you go from your house before you went to the pool room? A. I went right straight from my house to the pool room.

Q. Had it been your habit? A. Once in a while.

Q. Who were there when you came? A. I don't remember.

Q. How many? A. I don't remember.

Q. Can you tell one person, the name of him? A. Louis Vice and Eddie Haller.

Q. Were those the only persons there when you arrived? A. That is all I can remember.

Q. Do you know whether there were any others? A. No, sir.

Q. What is your best judgment about it? A. I don't know.

Q. Do you remember of seeing anybody that you can name there besides those two? A. I do not.

Q. What were those two doing? A. One of them was sitting down and one was playing pool.

Q. At the time that you entered, what was Vice doing? A. Playing pool.

Q. With whom? A. Johnnie Haller.

Q. And do you remember now of seeing anybody around at that time watching them play the game? A. I don't remember.

Q. Do you remember seeing any one reading there? A. No, sir.

Q. Or sitting down? A. No, sir.

Q. Do you know whether there was or not? A. I don't know.

Q. How soon after you arrived did any person come in there? A. I don't remember.

Q. How long did you stay there after your arrival before you again left? A. I stayed there till 10 o'clock.

Q. Did you go out of the room at all? A. I stayed there right up till 10 o'clock.

Q. Did you go to the post-office? A. No, sir.

Q. What were you doing all the time in that period? A. Sitting down and watching them play pool.

Q. Who were engaged all that time playing pool? A. Louis Vice was playing and Johnnie Haller when I went in, and I don't remember who was afterwards.

Q. When you entered, it was Edward Haller who played? A. No, sir; it was not.

Q. Didn't you say here it was he when you entered? A. No, sir.

Q. Who was playing with Vice when you entered? A. Louis Vice and Johnnie Haller, Eddie Haller's brother.

Q. That is when you went in there at quarter-past 7 or twenty minutes past 7, — which was it? A. It was twenty minutes past 7.

Q. You say that John Haller was playing with Louis Vice? A. Yes, sir.

Q. Had you seen John Haller come? A. No, sir; he was in there when I went in.

Q. Was Edward Haller in another room? A. No, sir.

Q. Do you know whether he was or not? A. Why, I see him sitting there, that is why I know.

Q. You saw Edward Haller sitting there? A. Yes, sir.

Q. And you saw John Haller and Louis Vice playing? A. Yes, sir.

Q. When you came in? A. Yes, sir.

Q. Now, did those two persons continue to play after you went in there, John Haller and Louis Vice, until you departed? A. I don't remember.

Q. Were you watching the game all that time? A. Some of the time I was, and some of the time I wasn't.

Q. There was a severe contest between them, was there? A. No, there wasn't.

Q. What was the game they were playing? A. Rotation.

Q. Do you know how many games they played? A. I do not.

Q. Or points? A. I do not.

Q. Did you do anything except to watch them playing? A. That is all I done.

Q. Do you remember any other person watching the game? A. I don't remember.

Q. You were intently watching the game all the time while they were playing? A. Part of the time.

Q. What were you doing the other part? A. Sitting around smoking.

Q. Did you notice whether or not people came in or went out? A. I don't remember.

Q. So that if people did come in or go out you didn't notice? A. I didn't notice.

Q. Did you see Charles Woodward there? A. I don't remember.

Q. Was he there when you entered? A. I don't remember.

Q. Did you see William Morrissey there? A. I don't remember.

Q. Can you tell any other persons' names, than you have, who came in or who went out during the time that you were there? A. I cannot.

Q. Where was John O'Neil when you first saw him that night? A. Saw him stick his head in the door, the first I see him.

Q. Which door? A. The one to the — leading that way.

Q. Well, I can't tell where that is. A. The west door.

Q. In reference to the railroad track there, you say the west door? A. Yes, sir.

Q. What did he say? A. He wanted Eddie Haller to come out there.

Q. Did he say anything else? A. I didn't hear him say anything else.

Q. Were the boys playing then? A. I don't remember.

Q. Were you watching them? A. I don't remember.

Q. After hearing that, that John O'Neil said, did you return to the game to watch it? A. Explain that once more; I didn't understand it.

Q. As soon as you heard what John O'Neil said in calling out Haller, did you again watch the game? A. I was watching it all the time, mostly.

Q. Except to look around and hear what was said by John O'Neil, — was that it? A. What is that? Explain that again.

Q. As soon as you heard what John O'Neil said, did you begin to watch the game again? A. Yes, I watched on.

Q. So they were playing then, weren't they? A. Yes, sir.

Q. Did Haller go out? A. Not while I was there.

Q. When O'Neil called him, did Haller respond? A. No, sir.

Q. Did you notice whether he did or not? A. No, sir.

Q. You had seen John O'Neil there before that, hadn't you? A. No, sir.

Q. Haven't you told that you had? A. No, sir.

Q. Didn't you tell James Hart that you had? A. No, sir.

Q. Didn't you tell James Hart that you saw him in there between 7 and 8? A. No, sir.

Q. Were either of your brothers in there during any of the time while you were there? A. No, sir.

Q. Did you tell James Hart anything? A. No, sir.

Q. About it? A. No, sir.

Q. You know James Hart? A. Yes, sir.

Q. Have you had any talk with him about whether or not Jack O'Neil was in there? A. No, sir.

Q. Do you remember anything that occurred other than what was stated? A. No, sir.

Q. That is all that occurred, to your knowledge? A. Yes, sir.

Mr. HAMMOND. That is all.

WILLIAM WOOD — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. William Wood.

Q. Living in Shelburne Falls? A. Yes, sir.

Q. Know John O'Neil? A. Yes, sir.

Q. Whether or not you were in the pool room on Friday, January 8? A. I was, in the evening.

Q. What time did you first enter the pool room? A. About 7 o'clock.

Q. About how long did you remain? A. Until about half-past.

Q. What say? A. Until about half-past 7.

Q. Where did you go then? A. Up to the post-office.

Q. And after going to the post-office whether or not you returned?

A. I did.

Q. And from that time how long did you remain in the pool room?

A. I forget; I think I stayed there till about 10 o'clock.

Q. At any time during the evening did you see John O'Neil there?

A. Yes, sir.

Q. And state as nearly as you can the time you first saw him. A. When I first went in, — shortly after I went in.

Q. And about what time was that? A. About 7 o'clock.

Q. Did you have any conversation with him about money? A. No, sir.

Q. Did you hear him say anything to Ratty Haller about money? A. No, sir.

Q. Whether or not you heard him say, "I've got the tin"? A. No, sir; I didn't hear him say that.

Q. Have you not stated to the people who came to inquire of you about this that you heard him say to Ratty Haller, "I've got the tin"? A. No, sir; it was to Eddie Haller.

Q. What say? A. To Edward Haller.

Q. Did you hear him say that to any one? A. Yes, sir; to Edward Haller.

Q. And about what time did you hear him say that? A. I have forgot.

Q. What was the connection of the conversation? A. I think he wanted to play pool, and he showed the money to him.

Q. Did you hear him call for one of the Haller's to come out? A. Yes, sir.

Q. And when did you hear that? A. I don't know.

Q. Whether or not you had seen him at that time? A. I see him when he came in.

Q. When first did he come in with reference to that calling of the Haller out? A. I don't know.

Q. Whether or not that was the first you saw of him? A. I have forgotten.

Q. What? A. I have forgotten.

Q. Had you seen him at any time that evening before the time when you heard him call to Auction Haller to come out? A. Yes, sir; I see him at 7 o'clock Saturday night.

Q. Where? A. In the pool room.

Q. What was he doing? A. He was standing there when I see him.

Q. What was he doing? A. Nothing in particular.

Q. Who were there with you? A. I think Mr. Smith sit side of me.

Q. What Smith? A. Edward Smith.

Q. Who else? A. And Christian Fritz was in there.

Q. Who else? A. I think Homer Cudworth.

Q. Go on. A. And Mr. Haller.

Q. Which Haller? A. Edward Haller.

Q. Go on. A. That is all I remember.

Q. Were there others? A. There were.

Q. Can you by reflection name the others? A. No, sir.

Mr. HAMMOND. Inquire.

Cross-examination.

Q. (by Mr. BEER). To what night do you refer? A. Saturday night, — or Friday night.

Q. Well, which is it? A. Friday night.

Q. What were you doing on that day? A. Working.

Q. Where? A. On the railroad.

Q. In what capacity? A. Section hand.

Q. What time did you get through with your work? A. Six o'clock.

Q. Where do you live? A. On Franklin Street.

Q. How far from the depot? A. Well, less than five minutes walk.

Q. Well, how far? A. About a quarter of a mile, — not a quarter, not quite a quarter of a mile.

Q. What time did you get your supper? A. As quick as I got home; I don't know what time that was.

Q. Whether you stopped to change your clothing? A. I did.

Q. Before supper? A. After supper.

Q. Any one eat supper with you? A. Yes, sir.

Q. Who? A. All the folks.

Q. Who were they? A. Father and mother, brother and sister.

Q. Are you a brother of James Wood? A. No, sir.

Q. Relative? A. My other brother —

Q. What say? A. His name is Mat.

Q. How long did you remain in your house after supper? A. Time to change my clothes.

Q. After you changed your clothes, what did you do? A. Went directly down street and into the pool room.

Q. Any one go with you? A. No, sir.

Q. Who was in the pool room when you entered? A. I don't remember who was there when I entered, except Mr. Haller, the proprietor.

Q. Which Haller? A. Edward Haller.

Q. Was he alone in the room? A. No, sir.

Q. How many were in the room when you entered it? A. I should say about ten.

Q. And what time did you enter the room? A. Seven o'clock.

Q. How do you know? A. Well, because I hadn't been in there only about an hour when I started for the post-office about half-past 7.

Q. How many of the ten men that were there when you reached the pool room can you name? A. Only one, — only Mr. Haller.

Q. How long had you been there before the time when you say John O'Neil appeared? A. I hadn't been there over five minutes.

Q. Did any one accompany him? A. No, sir.

Q. Did he come in alone? A. Yes, sir.

Q. What did he do? A. He walked in and stood side of the wall.

Q. What did he do as he stood there? A. Nothing.

Q. Did he say anything? A. Not that I remember.

Q. Did he speak to any one? A. Not that I remember.

Q. Did he speak to you at any time during that visit there at the time you name? A. No, sir.

Q. Did he appear to have any errand? A. No, sir.

Q. Did he sit down? A. I don't remember.

Q. How long did he stay? A. I don't remember that, either.

Q. State as nearly as you can how long you say he stayed. A. Why, he stayed until I went out, I think; I am not sure.

Q. Did he go out before you did? A. No, sir.

Q. Did you leave him there? A. I think I did.

Q. Can you tell any one who was there when you went out except Eddie Haller? A. On Friday night?

Q. At this time when you say you saw John O'Neil there. A. No, sir.

Q. Can you name one of them? A. No, sir.

Q. Can you tell what the people were doing that were there? A. They were playing pool.

Q. Who were playing pool? A. I don't remember.

Q. Were they strangers to you? A. I don't think they were.

Q. How long had you lived in the village? A. About ten years.

Q. You know the people who frequented these pool rooms? A. Yes, sir.

Q. Can you not now name one of them besides John O'Neil? A. No, sir.

Q. And can you name what any of them were doing? A. Two of them were playing pool.

Q. And can you refresh your recollection so as to give their names? A. No, sir.

- Q. Can you tell what time you went out? A. Yes.
- Q. Give it. A. Half-past 7.
- Q. How do you know? A. I looked at the clock.
- Q. And name the persons whom you left in the pool room? A. I cannot, except Mr. Haller.
- Q. You mean that? A. Yes, sir.
- Q. Only Mr. Haller that you know? A. Yes, sir.
- Q. You mean to say that John O'Neil had gone out? A. I don't know; I said I thought he stayed there, — I am not sure of it.
- Q. How will you leave that? A. That I don't know.
- Q. What is your best recollections to whether he was in the pool room when you went to the post-office? A. I couldn't say.
- Q. State your best recollection. Do you think, on reflection, that he was there when you went out? A. He was there shortly before I went out; I don't know whether he stayed or not.
- Q. What do you say about my question? Do you think he was there when you went out to go to the post-office? A. I cannot say.
- Q. Do you think that he was there when you went out to go to the post-office at one time? A. I said I thought he was.
- Q. What do you say about it? A. I think he was; yes.
- Q. Why did you say that the only person whom you knew as being in the pool room when you left was Edward Haller? A. He was the only one I was sure of.
- Q. Then you are not sure of John O'Neil? A. No, sir.
- Q. State anything you saw John O'Neil do during this time you say he was there. A. I don't remember anything he done.
- Q. State anything you heard him say while he was there. A. Well, it is so long, I have forgotten. I have never been called up before.
- Q. Now, will you swear that man was in the pool room at that time before half-past 7? A. On Saturday night, or Friday night?
- Q. On Friday night. A. No, sir; it was Saturday night.
- Q. Where were you working all this time, or constantly at this time you have testified about? A. On the railroad.
- Q. The Fitchburg railroad? A. Yes, sir.
- Q. Had you been working there all the week? A. Yes, sir.
- Q. What did you do? A. Section hand.
- Q. Whereabouts on the railroad had you been working that week?
- A. I don't remember.
- Q. Was your father employed on the railroad? A. Yes, sir.
- Q. Do you know at what time you went home on Friday night?
- A. I generally go home at 6 o'clock.
- Q. Did you go home generally at 6 o'clock every night? A. Yes, sir.

Q. Without any exception on any day of the week? A. Well, there were times that we did not, because of accidents, — anything like that.

Q. About what time did you get home Friday night? A. Six o'clock, about 6 o'clock.

Q. And you had supper immediately after you got home? A. Yes, sir.

Q. How long were you in the house before you left? A. About three-quarters of an hour.

Q. Did you shift your clothing? A. Yes, sir.

Q. Who were in the house when you left? A. Father and mother and brother and sister.

Q. Was that true of Thursday night also? [Question withdrawn.]

Q. And you remember clearly, do you, on Friday night? A. Yes, sir.

Q. Do you know what time it was when you left the house on Friday night? A. No, sir.

Q. Where did you go? A. Down street and into the pool room.

Q. On Friday night? A. Yes, sir.

Q. Who were there? Did you see John O'Neil there that night? A. Yes, sir.

Q. And at what time? A. About, well, shortly after 8 o'clock, — I can't say just what time.

Q. Had you seen him there before that? A. No, sir.

Q. What did you see about him? A. Not anything in particular.

Q. What was the first thing you noticed about him on Friday night? A. I didn't notice anything any more than any other night.

Q. When had you been in the pool room before that? A. I went in there at 7 o'clock.

Q. When before that night? A. Pretty near every night.

Q. Who were in there on Thursday night? A. I don't remember.

Q. Wednesday night? A. I don't remember.

Q. Who were there when you arrived on Friday night? A. Mr. Haller is all I can name; there were others there, but I could not name them.

Q. Were they playing pool? A. Yes, sir.

Q. Is that the only person you can name? A. Yes, sir.

Q. They were playing pool at the time you came in? A. Yes, sir.

Q. How long after you were there playing pool was it that you saw O'Neil come in? A. I won't be positive; at half-past 7.

Q. I am asking you how long it was, not what you did. A. About an hour and a quarter.

Q. Who came in with him? A. I don't remember of anybody.

Q. Who was in there when he came in? A. I don't remember.

Q. Can you tell any person's name that was there when you saw O'Neil enter? A. Yes, sir; I can.

Q. What was his name? A. Mr. Fritz, — Christian Fritz.

Q. Where was he? A. He was sitting down not far from me, on the same side of the room.

Q. Can you name any other persons? A. Mr. Vice, Mr. Haller, John Haller.

Q. Those are the persons that you saw when O'Neil came in? A. Yes, sir.

Q. Were there any other persons there? A. There were.

Q. Now, can you tell now who were there when you entered the room first on Friday night? A. No, sir; not except Mr. Haller.

Q. Can you tell who the other was that was playing pool? A. At what time do you mean?

Q. When you entered the pool room the first time. A. No, sir.

Q. Can you tell any person's name from the time you entered until you left to go to the post-office on Friday night? A. None except those that I have named already.

Q. Were they there all the time? A. I don't know.

Q. When did Glassett come in? A. I don't remember.

Q. You said Fritz, — Christian Fritz? A. Yes, sir.

Q. When did he come in? A. I don't remember that, either.

Q. Can you tell when any of them came in? A. No, sir.

Q. What did you do when you entered, and what were you doing all the time from that time to the time you went to the post-office?

A. Came in, and sat down in a chair and watched them playing.

Q. Now, can you tell who were playing? A. No, sir.

Q. How many of you went to the post-office? A. I couldn't tell.

Q. Were there any remaining when you went to the post-office? A. Yes, sir.

Q. How many? A. I don't remember.

Q. Can you tell their names? A. None except Ed Haller.

Q. That is Friday night? A. Yes, sir.

Q. How long were you away at the post-office? A. About half an hour.

Q. Did you go anywhere else? A. Yes, sir.

Q. You left the pool room and went directly to the post-office? A. Yes, sir.

Q. And remained away half an hour? A. Yes, sir.

Q. Did you get your mail before you returned? A. No, sir.

Q. Or attempt to? A. I intended to get the mail.

Q. Where did you go from the post-office? A. Back to the pool room.

- Q. And how long from that time did you remain in the pool room?
A. Until, I think, about 10 o'clock.
Q. Were there games? A. Yes, sir.
Q. All during that period? A. Yes, sir.
Q. Who were engaged in playing? A. I don't remember anybody except Louis Vice and John Haller.

Recess until 2.30 P.M.

AFTERNOON SESSION.

The roll of the jury was called, and the prisoner answered to his name.

Cross-examination of WILLIAM WOOD — resumed.

- Q. (by Mr. BEER). Can you tell the exact time you returned from the post-office? A. No, sir.
Q. After you returned from the post-office can you tell any definite time when you were there? A. No, sir.
Q. Or when you left? A. No, sir.
Q. Can you tell us who was engaged in playing games there while you were there? A. On Saturday night?
Q. No, on Friday night. A. No, sir.
Q. Did you understand I was inquiring of Saturday night? A. Yes, sir; I thought you were. And I understood Mr. Hammond to.
Q. I am not asking you what you understood Mr. Hammond to do, but what you understood my questions to be. A. Yes, sir.
Q. Have you replied to all my questions as relating to Saturday night only? A. Yes, sir.
Q. You understood all my questions to refer to Saturday night? A. Yes, sir.
Q. You had been telling us what occurred on Friday, hadn't you? A. Yes, sir.
Q. And I asked you a question about Saturday night? A. I don't know.
Q. What makes you think, then, that I have been inquiring as to Saturday night? A. I just thought you was, that is all.
Q. What? A. I understood you to say Saturday night.
Q. You understood me to say Saturday night right through the course of the cross-examination? A. Yes, sir; in the first place.
Q. And do you understand that I have not said Friday as the time that I have been inquiring about? A. Yes, sir.
Q. Were any of those things which you have said to me in reply to my question true of Friday night? A. No, sir.

Q. None of them? A. I don't remember all your questions.

Q. Have you given us any information as to what transpired in the pool room there in reply to my questions, Friday night? A. I don't know.

Q. Can you tell us the answers you have given relating to Saturday night in reply to my first question, to my questions? A. No, sir.

Q. Were you in there Friday night? A. Yes, sir.

Q. Now do you understand I say Friday night? A. Yes, sir.

Q. What time did you arrive there Friday night? A. At about 7 o'clock.

Q. What Friday night do you understand me to mean? A. Friday night of January 8.

Q. Do you know that that is the day? A. Yes, sir.

Q. That I am inquiring about? A. That is what I understood you.

Q. You understand that it relates to the day when Mrs. McCloud was supposed to have died? A. Yes, sir.

Q. Now, then, what time did you arrive at the pool room on Friday night? A. At about 7 o'clock.

Q. Who was then there? A. Mr. Haller, all that I remember.

Q. Which one? A. Edward Haller.

Q. Can you remember any other person there on Friday night except Haller at 7 o'clock? A. Not their names; there were other persons there.

Q. How many other persons were there then? A. About ten or fifteen.

Q. Can you give any other name? A. No, sir; not except Mr. Haller.

Q. Have other names ever occurred to you since? A. No, sir.

Q. What were they doing? A. Two of them were playing pool.

Q. All of them? A. No, sir; two of them.

Q. Who were they? A. I don't remember.

Q. Do you remember who played pool during the Friday night at any times that you were there? A. No, sir.

Q. What times were you there? A. I don't remember.

Q. How long did you stay there without going out the first time? A. About half an hour.

Q. Where did you go? A. To the post-office.

Q. How long did you stay there? A. I don't remember.

Q. Did you go to the pool room Friday night after the post-office? A. I don't remember.

Q. Have you ever stated that you did? A. Not that I know of.

Q. Do you know whether you did or not? A. No, sir.

Q. Go back there from the post-office? A. No, sir.

Q. Where did you go? A. I don't remember.

Q. Can you tell us where you went after leaving the post-office?
A. No, sir.

Q. Can you tell us anywhere? Did you say no? Can you tell us one place? A. I believe I did go back to the pool room.

Q. Now, what makes you believe it? A. I remember it now; I didn't when you asked me the question.

Q. Did you receive any significant look from anybody while I was asking those last questions? A. No, sir.

Q. Now, what time did you go back to the pool room? A. At about 8 o'clock, or shortly after.

Q. Now, do you know the time? A. No, sir.

Q. Who were there? A. Christian Fritz, Edward Haller, John Haller and Louis Vice.

Q. What were they doing? A. Louis Vice and John Haller were playing pool; the rest were sitting watching them.

Q. Have you named all the persons' names? A. No, sir; there was others that I don't remember their names.

Q. Did you see any one sitting down there? A. Yes, sir.

Q. Who was it? A. Mr. Fritz was sitting down, that is all I remember.

Q. To what time did they play pool? A. I don't remember.

Q. On Friday night? A. Yes, sir.

Q. Were they playing pool there all the time you were there? A. Yes, sir.

Q. Did Louis Vice play there all that time? A. I don't remember.

Q. Was Louis Vice in there any day before Friday playing pool?
A. Yes, sir.

Q. What day? A. I don't remember.

Q. Of that same week? A. I don't remember whether that same week or not.

Q. Can you tell who played pool on Thursday night? A. No, sir.

Q. Or Wednesday night? A. No, sir.

Q. Who were Thursday night? A. I don't remember.

Q. Did you go there? A. I don't remember that either.

Q. Did you go there Wednesday night? A. I don't remember.

Re-direct Examination.

Q. (by Mr. HAMMOND). Did State officer Hammond, D. W. Hammond, talk with you about this case? A. Yes, sir.

Q. And did you tell him what you knew about it? A. Yes, sir.

Q. And when did he talk with you? A. I don't remember; two or three weeks ago now, I guess.

Q. Didn't you tell him the first you saw O'Neil in the pool room was about half-past 8? A. No, sir; I didn't tell him that was the first I see of him.

Mr. BEER. Wait a moment, please.

Mr. HAMMOND. That is all.

Re-cross-examination.

Q. (by Mr. BEER). Who was it you had the talk with? A. Mr. Hammond.

Q. Who is Mr. Hammond? A. State detective.

Q. Where was it? A. On the railroad.

Q. (by Mr. HAMMOND). Whether or not Mr. Fisher was present too? A. Yes, sir.

JOHN H. COUARD — *sworn.*

Q. (by Mr. HAMMOND). What is your name? A. Couard.

Q. The whole of it? A. Couard, — John Couard.

Q. Have you a middle name? A. Henry.

Q. How old are you? A. About twenty-five.

Q. Live in Shelburne Falls? A. Yes, sir.

Q. Did you know John O'Neil? A. Yes, sir.

Q. Whether or not you saw him on Friday, January 8? A. Just around at Ward's corner.

Q. At what hour? A. Quarter to 6.

Q. With whom, if anybody? A. Jimmy Wood and Tim Kennedy.

Q. Did you talk with him at all? A. I says, "How do you do?" and I walked right along.

Q. Did you see where any of that party went? A. No, sir.

Q. Did you see any of them only just what you have given? A. No, sir; I wasn't out any more.

Q. Where did you see John O'Neil on Saturday? A. In the blacksmith's shop.

Q. What time? A. Well, I should say about half-past 9.

Q. Where did you meet him first? A. I was in the blacksmith shop, and Charlie Woodward came in and beckoned me out.

Q. Where was John O'Neil? A. He was outside of the door.

Q. Tell what John O'Neil and Woodward said when you were outside the door. A. Asked me if I would fetch a pint of rum.

Q. Who did? A. Woodward.

Q. Go on and tell what was said. A. He handed a two-dollar bill out, and I wouldn't take it, because I owed the bartender a quarter, and I thought he would stop it out.

Q. Who handed the bill to you? A. Charlie Woodward.

Q. Go on. A. And so they got it changed and gave me 50 cents, and I fetched a pint of rum and went back to Frost's barn, me and John O'Neil and Morrissey and Charlie Woodward.

Q. When you met him at the blacksmith's shop, whether he said anything to you about the death that had occurred? A. No, sir.

Q. When you went into the rear of Frost's barn, tell who went. A. What?

Q. Who went with you in behind Frost's barn? A. Who went back of Frost's barn?

Q. Yes. A. Me and Charlie Woodward and Johnny O'Neil and Billy Morrissey.

Q. About what time were you there? A. I couldn't say whether it was half-past 9 or half-past 8; I don't know what time it would be.

Q. How long did you stay there? A. Oh, about fifteen minutes.

Q. What did you talk about? A. Talked about nothing — what, back of Frost's barn?

Q. Yes. A. Well, John O'Neil said he had lost a ten-dollar bill.

Q. Go on. A. And I says, "That is too bad." So Billy Morrissey says, "I took it out of your pocket last night; if you had let me keep it, you would have it now." So John says, "Let it go," then.

Q. Can you give the phrase John O'Neil used? A. No.

Q. How long did you stay there? A. About fifteen or twenty minutes.

Q. While you were there, did John O'Neil tell you that he had heard of Mrs. McCloud's death? A. No, sir.

Q. Where did you go then? A. Went up by Jenks's corner.

Q. Whom did you meet there? A. I don't know who was talking about it; there was a crowd there said Mrs. McCloud was dead, and I asked no questions.

Q. How did you know who announced it? A. What?

Q. Did you know who told of it? A. No.

Q. How many people were there? A. I don't know.

Q. What time was it? A. I didn't know.

Q. As near as you can tell? A. Well, I don't know; I couldn't tell you.

Q. [Question repeated.] A. I couldn't tell you.

Q. What was said? A. What was said? They said Mrs. McCloud was being murdered, or something.

Q. Who used that phrase? A. I don't know.

Q. Did John say anything? A. No, that is what I heard; I didn't hear him say anything.

Q. Hear him say he knew she was dead? A. No.

Q. You know who said that? A. No.

Q. Can you tell any person that mentioned it? A. No, sir.

Q. Can you tell what you said about it? A. No, sir; because I didn't say anything.

Q. Can you tell what John O'Neil said about it? A. No, sir; because he didn't say nothing.

Q. Or Woodward? A. No, sir; I didn't hear him say nothing.

Q. Or Morrissey? A. No, sir.

Q. Where did you go next? A. To the hotel, with Billey Morrissey.

Q. What did you do? A. Sat down and watched them play crib.

Q. Where did you meet O'Neil next? A. I came out of the hotel and saw O'Neil, Atkins and Woodward.

Q. Where? A. Outside of the hotel.

Q. Did you join them? A. Yes, sir; I joined them.

Q. What did you do? A. They asked me to go and fetch another pint of rum, and I fetched it.

Q. What did you do then? A. Went back of the barn and drank that.

Q. At the same place? A. Yes, sir.

Q. What did you talk about that time? A. Nothing; I didn't hear anything.

Q. Nothing? A. No, sir.

Q. Hear O'Neil say that he heard Mrs. McCloud died a natural death? A. No, sir.

Q. Died of chills? A. No, sir; I didn't hear nothing.

Q. Hear him say that Mr. Crittenden said she had bad spells? A. No, sir.

Q. Did he talk at all about Mrs. McCloud? A. No, sir; not that I heard.

Q. That time was the second visit back of Frost's barn? A. I don't know, I am sure; couldn't tell you.

Q. How near noon? A. It would be about noon; perhaps later.

Q. Where did you go from there? A. We drank that pint, and fetched another pint.

Q. Well, where did you take this last pint? A. Same place, — back of Frost's barn.

Q. How long did you remain there? A. I don't know.

Q. Which way of an hour, — longer or shorter time? A. I didn't take no notice; kept having a drink, and stopped there.

Q. Where did you go on leaving these people at the rear of the barn? A. I went in the blacksmith's shop.

Q. From there where did you go? A. I stopped in there until — well, it might be 6, or quarter to.

Q. Did you see John O'Neil again? A. Yes, sir; I saw him at night.

Q. Did you see him again from the time you left the rear of Frost's stable until the time he was prostrated in the alley? A. No.

Q. During all the time you saw him on Saturday, did he tell you what he had heard as to Mrs. McCloud's death? A. No, sir.

Q. Did he tell you he knew it before he left home in the morning? A. No, sir.

Q. Do you know of his having any money on Friday previous to dark? A. I don't know; I was not with him Friday.

Q. Did you see him have any? A. I was not with him.

Q. Any day previous to Friday? A. No, because I was not with him that week; saw him many a time in the street.

Q. Know about his borrowing a dollar to go to Westfield? A. Sure.

Q. What? A. He didn't borrow a dollar.

Q. What? A. A man gave him a dollar.

Q. Who gave him a dollar? A. Johnny Conners.

Q. For what purpose? A. He gave us a dollar to go and get board somewhere for the night; we went down to Westfield for a job.

Q. So you might have your board for the night after you were gone to Westfield for the job? A. No, that was down in Westfield, when he gave it to us.

Q. You say Jacky Conners gave it to you in Westfield? A. Yes, sir.

Q. Where does Jacky Conners live? A. He lives in the Falls now.

Q. What did O'Neil do with the dollar? A. He spent it.

Q. Where? A. In Westfield.

Q. Do you know of his having any money after that? A. I don't know; I know I had nothing; I don't know what he had.

Cross-examination.

Q. (by Mr. DOWLIN). State who was with O'Neil when you saw him at Ward's corner Friday night at 5.45. A. Five forty-five?

Q. Yes. A. That is a quarter to 6, eh?

Q. Yes. A. All right. There was Jimmy Wood, Tim Kennedy, Denny O'Brien; I left Denny O'Brien there talking to him.

Q. Did you see them separate? A. No.

Q. Did you see any of them move off? A. No.

Q. Do you know what time it was you went to the blacksmith shop Saturday morning? A. Saturday morning? Well, I couldn't say; I said it might be half-past 8 or 9 o'clock.

Q. It is only guess work with you, isn't it? A. Yes, I guess so.

FRANK W. JOYCE — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Frank W. Joyce.

Q. How were you employed on Friday, January 8? A. Frost's livery stable.

Q. And how on Saturday, — the same? A. Yes, sir.

Q. Whether or not on Saturday, January 9, you saw John O'Neil and any other persons with him? A. Saturday morning I saw him.

Q. And when? A. Between half-past 9 and 10 o'clock.

Q. And state how many were with him, and give their names. A. There was Mr. Morrissey, Mr. Couard, Mr. Woodward and Mr. O'Neil.

Q. Where were they? A. Back of the stable.

Q. And whether that is back of the stable where you were employed? A. Yes, sir.

Q. Where were you when you saw them? A. I was up stairs in the stable.

Q. And in what part of the barn is it? A. It is in the west part.

Q. And with reference to the horses' stable, whether it is up—
A. Up over the horses.

Q. And what opportunity had you of seeing them from that point?
A. Looking out a window.

Q. How far from them were you? A. About twenty-five feet.

Q. Now, if you saw or heard anything, you will state it. A. I heard them talking out there, heard them telling about being up to the depot, and down to the engine house, and also heard them talking about the money.

Q. Tell what they said. A. Mr. O'Neil was wondering where his \$10 had gone to, and Mr. Morrissey spoke up and said it wouldn't make a hell of a lot of difference any way; and O'Neil says "No," he says he'll "never miss it." He also took off his hat and showed a wound on his head, and said it was where he ran into the corner of a building.

Q. How long were they there? A. They might have been there ten minutes.

Q. What were they doing besides talking? A. Drinking.

Q. Did you see in which direction they moved? A. Yes, sir; they went out toward the fish market.

Q. Did you see them again on the street? A. Yes, sir; I saw them a few minutes afterwards.

Q. Where? A. Out on the corner by Jenks's shoe store.

Q. What did you see there? A. They were there when Joe Shaw was telling about finding the body of Mrs. McCloud.

Q. Did you hear John O'Neil make any remark about it? A. I did not.

Q. Did you hear him state anything as to having knowledge of it before he left home? A. No, sir.

Cross-examination.

Q. (by Mr. BEER). What did you say your duties were at that time? A. Employed there in the stable.

Q. You were employed then, were you? A. Yes, sir.

Q. What were your duties? A. I had charge of the stable.

Q. What floor is it upon? A. Where I was at the time?

Q. Yes. A. I was on the second floor.

Q. Anybody with you? A. Yes, sir.

Q. Who were they? A. Ed Sommers, a fellow that worked there with me.

Q. Where were you standing when you heard anything below?

A. I was standing right front of the window.

Q. Where was the other man? A. The other man?

Q. Yes. A. He was right beside me.

Q. Both of you there? A. Yes, sir.

Q. How far were the others from you? A. Down in the yard, you mean, in the rear of the stable?

Q. Yes. A. They were about twenty-five feet, I should say.

Q. Window open? A. Partly.

Q. It was winter? A. Yes, sir.

Q. Had you seen them drinking anything? A. Yes, sir.

Q. Who were there? A. There was Morrissey, Couard, O'Neil and Woodward.

Q. Which Morrissey? A. Why, William Morrissey, William P. Morrissey.

Q. Where was it you saw Joe Shaw? A. On the corner by Jenks's shoe store.

Q. What time in the day was it? A. It was a few minutes past 10, I should say.

Q. Had your duties confined you in the stable until that time in the morning? A. Yes, sir.

Q. And your first appearance on the street was when you saw Shaw, was it? A. It was since, probably, about 7 o'clock.

MELISSA CHAFFEE — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Mrs. Chaffee.

Q. And your maiden name, first name? A. Melissa.

Q. Mrs. Melissa Chaffee? A. Yes, sir.

Q. Where do you live? A. Shelburne Falls.

Q. Do you recollect Saturday, January 9, whether or not you saw John O'Neil that day? A. I didn't see John O'Neil.

Q. Do you recollect an occasion when you knew of some people being in the rear of Frost's livery stable? A. Yes, sir.

Q. Who were with you? A. Mrs. Lilla Sommer and my daughter.

Q. Which one of the two stepped to the front at that time? A. Lilla.

Mr. HAMMOND. With the leave of the court, I would like to ask this witness to step down. You can step out of the room again.

LILLA SOMMER — *sworn*.

Q. (by Mr. HAMMOND). How do you spell your last name? A. S-o-m-m-e-r.

Q. Where do you live? A. Shelburne Falls.

Q. Were you there on Saturday, January 9 last? A. Yes, sir.

Q. Whether or not at some time in that day you saw some people gathered back of Frost's livery stable barn? A. Yes, sir.

Q. Where do you live, I will ask you? A. Well, I can't just tell you; back of the hotel; it is in an alleyway.

Q. Won't you turn around to the map and see if you can point out the place? Do you see Bridge Street on the Shelburne side? A. Yes, sir; that is on the Shelburne side [showing].

Q. Won't you trace Bridge Street, and then tell where you live? A. It is right back of the hotel, down in behind the barn.

Q. There is the fish market? A. It is not there; it is right by the fish market, but not quite.

Q. How far from the fish market? A. Right by the fish market.

Q. And at what point were you on the occasion inquired of, — where did you stand? A. I stood right by the barn; I was not over two or three rods away from it.

Q. And whether any persons were with you? A. There was one girl near me at that time.

Q. Who was it? A. Lena Chaffee.

Q. Was there any other person? A. No, sir.

Q. Where was Mrs. Chaffee? A. She was on the piazza.

Q. How far away from you? A. Quite a ways from me.

Q. Whether she was in a position where she could see you, — you and Lena? A. Yes, sir; she was where she could see us.

Q. What persons did you see? A. John Couard and Dubs Woodward, I don't know what his first name is, and Jack O'Neil were the three I saw; I don't know the other one, who it was.

Q. How many in all? A. Four in all, but the fourth one I didn't know.

Q. Where were they? A. Behind the barn.

Q. And how far from you? A. About two or three rods away from me.

Q. What were they doing? A. They were not doing anything at the time; I just saw them put a bottle in their pocket.

Q. Whether or not you heard any conversation? A. Yes, sir; a few words.

Q. State what it was. A. Shall I state it as I heard it?

Q. Yes. A. One of them said, "You know damned well you done it." And the other said, "You are a damned mean cuss." But the ones who were talking I didn't know.

Cross-examination.

Q. (by Mr. DOWLIN). Where were you standing when you heard this conversation? A. Behind the barn.

Q. Who else? A. Who with?

Q. Yes. A. With Lena Chaffee.

Q. What were you doing? A. I wasn't doing anything.

Q. What brought you there? A. Well, I heard the conversation, and I heard they were talking loud, and so I came over there.

Q. How far were you from them? A. Well, not but a few steps.

Q. Was Lena Chaffee stopping at your house? A. No, sir; I board there.

Q. Oh, you board there? A. Yes, sir.

Q. Where were you and Lena Chaffee before you started over behind the barn? A. In the house.

Q. You heard all the conversation that took place there? A. No, sir; I did not.

Q. Were you in a position where you could see it all? A. Well, I didn't stand where I could see it all; I only just heard those few words.

Q. Immediately after hearing those words, did you leave? A. Yes, sir.

Q. And you remember those words exactly as you stated them, do you? A. Yes, sir; I do.

Q. And you can repeat them *verbatim*, can you? A. Yes, sir; I can.

Q. Just repeat them now again. A. "You know damned well you done it; you are a damned mean cuss," and the other one said, that was all right.

Q. Anything else said? A. No, sir.

Q. How long have you known Jack O'Neil? A. Why, I don't know; I have only known him by sight; I never knew him to speak to.

Q. How long have you lived there? A. I have lived there ever since I was a child; I was born there, — born and brought up there.

Q. What were you doing the day before? A. I don't know ~~what~~ I was doing.

Q. Where were you employed? A. Shelburne Falls peg shop.

Q. Do you know who made that statement? A. No, sir; I do not.

Q. Do you know whether any one else was present around there besides yourself or not? A. No, sir.

Q. Do you know to whom the statement was addressed? A. No, sir.

Q. Do you know where it came from except from that location where you saw those people standing? A. Why, I heard it from that location, that's all.

Q. You thought it was from that location? A. No, I didn't think, — I knew it was.

Q. The sound came from that location? A. Yes, sir.

Q. You didn't know who said it? A. No, sir; I couldn't see; I just heard them; I was out of sight when it was said, but I know it was them, for there was nobody else around.

Re-direct Examination.

Q. (by Mr. HAMMOND). Whether or not you had seen them so that you knew there were four people there? A. Yes, sir; I knew there was four people there; I seen them, but I didn't know who the fourth one was.

Q. Whether you saw the three you have named? A. Yes, sir; I saw the three I have named.

Q. And at the time they were speaking, whether or not they were then in your sight or not? A. No, sir; they were not in my sight when they were speaking, only just I heard those words.

Re-cross-examination.

Q. (by Mr. DOWLIN). You don't know whether any one else spoke? A. No, sir.

Q. And you don't know but that there was somebody else there that you didn't see? A. No, I know there wasn't anybody else there.

Q. How do you know there was nobody else there? A. There was nobody else in sight.

Q. Couldn't there have been somebody else there? You didn't examine? A. No, sir; I didn't.

Q. You don't know, then, but that somebody else was there? A. Well, them were the very words I heard from those fellows.

Mr. KNOWLTON. She didn't finish. From those fellows, you said.

THE WITNESS. Yes, sir, from those fellows.

Q. (by Mr. DOWLIN). Do you mean to say that you heard those fellows speak those words? A. Yes, sir.

- Q. Did you see them? A. Yes, sir; I see the fellow.
- Q. Did you see them speak? A. No, I didn't see them speak, but I see the fellows, but I wasn't near enough to see them speak.
- Q. Then you don't know that they spoke those words, do you?
- A. Yes, sir; I know they — I know that they said them words.
- Q. You know that some one there said those words, don't you?
- A. Yes, sir; in that position, right there in that crowd.
- Q. In that location there? A. Yes, sir; I did.
- Q. Now, as to who spoke them, you don't know? A. No, sir; I do not.
- Q. Nor to whom they were addressed? A. No, sir.

LENA CHAFFEE — *sworn*.

- Q. (by Mr. HAMMOND). What is your name? A. Lena Chaffee.
- Q. Where do you live? A. Shelburne Falls.
- Q. And on what street? A. There is no street.
- Q. Well, whether or not it is next to the fish market? A. Yes, sir.
- Q. Whether or not you were out doors with Lilla Sommer on Saturday, January 9? A. Yes, sir.
- Q. And about what time? A. I don't know what time it was.
- Q. Well, in the forenoon or afternoon? A. Forenoon.
- Q. What did you and Lilla do? A. Well, we were standing on the piazza, and we heard a loud conversation.
- Q. Describe it. A. And we listened and we heard them, we heard the words, and they said, "You know damned well you done it; and you are a damned mean cuss," and we went out to see who they were.
- Q. What did you see? A. The only one I saw was Jack O'Neil.
- Q. What say? A. The only one I saw was Jack O'Neil.
- Q. Whether or not you knew the others, or didn't you see the others? A. I didn't see the others.
- Q. And whereabouts did you see Jack O'Neil? A. Down by the barn.
- Q. What did Jack O'Neil say, if anything? A. I don't know.
- Q. Whether or not Jack or any of them saw you? A. No, sir; they didn't see us.
- Q. Is your mother Mrs. Melissa Chaffee? A. Yes, sir.
- Q. Whether or not she was there in sight of you two girls? A. Yes, sir.
- Q. How many men were there in that party? A. I don't know just how many there were; there was at least four.
- Q. Did you see how long they stayed there? A. No, sir.
- Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). You don't know who spoke? A. No, sir.

Q. Do you know who the persons present there were? A. No, sir; I don't.

Q. Was it before or after you heard the words that you saw Jack O'Neil? A. It was after.

Q. How long after? A. Well, it was about five minutes afterwards.

Q. About five minutes afterwards? A. Yes.

MRS. MELISSA CHAFFEE — recalled.

Q. (by Mr. HAMMOND). Whether or not you recollect the occasion when your daughter Lena was with Lilla Sommer stepping out of your house on Saturday forenoon, January 9, and what did you see of the movement of those two girls? A. Why, they went on their feet.

Q. Whereabouts were they? How far towards the corner did they go? A. They went clear around the corner where they were.

Q. Did you see any of the men there yourself? A. No, sir; I did not.

Q. Did you hear any of the noise or disturbance? A. Yes, sir.

Q. Describe anything you heard — indicate what you heard. A. I heard some of them say, "You are a damned mean cuss; you knew damned well you done it." That is what I heard.

Q. Did you see the persons yourself? A. No, sir.

Q. Did you go near the corner at all? A. No, sir; I didn't go off the piazza.

[No cross-examination.]

JOSEPH W. SHAW — sworn.

Q. (by Mr. HAMMOND). Your name? A. Joseph Walter Shaw.

Q. Where do you live? A. Buckland.

Q. Whether you were there on Saturday, January 9? A. Yes, sir.

Q. And whether or not on that morning you heard of the death of Mrs. McCloud? A. Yes, sir.

Q. When first did you know of it? A. Saturday morning, about 9 o'clock.

Q. And from whom? A. Mrs. Meyer.

Q. What did you do, if anything? A. Went up the road to the place.

Q. How many people were there when you reached there? A. Four.

Q. For how long time did you remain? A. About fifteen minutes.

Q. I will ask you whether you were there when Dr. Canedy arrived? A. Yes, sir.

Q. Had you stayed all the time until then? A. Yes, sir.

Q. Whether anything had been changed from the time you first arrived until the time the doctor was there? A. No, sir.

Q. When the doctor reached there, whether or not you rendered any assistance in the carrying of the body home? A. No, sir.

Q. Whether you saw that done? A. No, sir.

Q. Whether you went away before that was done? A. Yes, sir.

Q. Was any one with you going and coming? A. Yes, sir.

Q. What name? A. Fred Depledge.

Q. Whether or not you went into the village after that? A. Yes, sir.

Q. And whether in the village you saw John O'Neil? A. Yes, sir.

Q. Where? A. Jenks's corner.

Q. Whether you had conversation with him? A. Yes, sir.

Q. State all that there was said by you or by him in that conversation. A. Well, I asked them if they had heard about finding Mrs. McCloud's body. They said no, and they wanted to know where it was found, and I told them on the Crittenden road; and O'Neil said, "What is this town coming to? A man's life ain't safe;" and then wanted to know if I thought there was any foul play. I told him I didn't know, but I took my suspicion from Dr. Canedy's remark.

Q. Whether he asked you any other questions that you now recollect? A. Yes, sir.

Q. Go on and state it all. A. He asked me—he says, "Who is this Mrs. McCloud?" and I explained to him it was Mr. Crittenden's oldest daughter; and he says, "The one that her husband got killed about seven years ago?" And I says, "Yes." He said he didn't think he knew her. He said he had seen the little girl going to school, and heard his mother speak of doing washing for her mother. That is all.

Q. Whether he said, "I don't remember ever having seen her, as I know of"? A. Yes, sir.

Q. Whether that was part of the same conversation? A. Yes, sir.

Q. Whether other people were there? A. Yes, sir.

Q. Who? A. Fred Depledge with me, Frank Joyce gathered round, William Morrissey and Charles Woodward.

Q. About what time was it? A. Well, between 10 and half past.

Q. Whether or not you observed the crowd change positions or observed O'Neil move anywhere else? A. Yes, sir.

Q. Please state. A. Moved down between Smith's and Knowlton's store, talking with William Morrissey, — another William Morrissey.

Q. State what was said. A. I didn't hear what was said.

Q. Whether you did hear O'Neil say anything more after ~~that~~

A. Well, O'Neil went up the street, I don't know who was with him up in front of the hotel, the stone hotel, and I see a crowd gathering there, and I went up, me and Depledge, and O'Neil saw ~~me~~ coming, and he says, "Here comes Joe Shaw, he said he was up there; how was she laid?" And I told him that she laid with her head towards the road.

Q. Do you recollect anything more said by them? A. No, sir; Mr. Woodward, the policeman, came along and moved the crowd along.

Cross-examination.

Q. (by Mr. DOWLIN). How old are you? A. Eighteen years.

Q. Where do you live? A. Buckland.

Q. Whereabouts in Buckland? A. I lived on Hill Street, at the time.

Q. Turn round and show the jury where you lived on Hill Street, on that plan. That is the bridge, that is Clement Street. Is this Hill Street here? A. Yes, sir; it is right here.

Q. Right in there? A. Yes, sir.

Q. Is a part of the same house that O'Brien lives in? A. Yes, sir.

Q. And the north side? A. Yes, sir.

Q. When did you first hear that Mrs. McCloud's body was found? A. I was out sawing wood in the back yard. Mrs. O'Brien asked me what people were going up and down the road for, and I went over to look, and just then Mrs. Meyer put her head out of the window and hollered over that Mrs. McCloud's body was found.

Q. Well, Mrs. Meyer lived up on the corner of Union Street and Crittenden road, didn't she? A. Right here.

Q. Yes; and she hollered across? A. Yes, sir.

Q. That Mrs. McCloud's body was found. And in consequence of that what did you do? A. I went up the road; Mr. Stone was ahead of me.

Q. How long were you up there? A. I should say about fifteen minutes.

Q. When you came down did you stop at home? A. Yes, sir.

Q. Told the folks all about what you saw up there, etc.? A. Ye sir.

Q. How long did you stay at home? A. Well, twenty or twenty-five minutes.

Q. Now, it was after 9 o'clock when you were out there sawing wood, wasn't it? A. A little before 9.

Q. When you got back there you spent twenty or twenty-five minutes at home? A. I should think so.

Q. How long did it take you to go up there? A. Oh, ten minutes, possibly not as long as that.

Q. How long did it take you to come back? A. Well, I came back slower than I went up.

Q. Who came back with you? A. Fred Depledge.

Q. Talking? A. Yes, sir.

Q. Moved along slowly? A. Yes, sir.

Q. Took your time about it? A. Yes, sir.

Q. And what time did you get down to the house? A. I couldn't swear to that.

Q. Did you see any timepiece there? A. No, sir.

Q. Did you notice any timepiece when you left the house? A. No, sir.

Q. Where did you go after you left the house? A. Right straight down street.

Q. Who did you go down with? A. Depledge.

Q. Did you talk with anybody else? A. No, sir.

Q. Did you meet anybody on Ward's corner that you talked with? A. No, sir.

Q. Did you meet anybody on the bridge you talked with? A. No, sir.

Q. Where was the first place you talked with anybody? A. Jenks's corner.

Q. That is right near the bank? A. Below the bank, west.

Q. Right by the head of Water Street? A. Yes, sir.

Q. And he was out there then? A. Just as I got there O'Neil and Dubsey and Morrissey came round the corner.

Q. Came round the corner of Water Street? A. Yes, sir.

Q. Whom did you speak to when you spoke? A. Well, nobody in particular, — the three of them.

Q. Was there anybody else upon the opposite side? A. Not that I know of.

Q. What did you say when you first spoke? A. I asked them if they had heard about finding Mrs. McCloud's body.

Q. Just what did you say? Give me the words that you said. A. That is as near as I can put it, I think.

Q. Give me the words and the form that you put them, as nearly as you can. A. I said "Hello" to them, in the first place; then I asked them if they had heard about finding Mrs. McCloud's body.

Q. Did you notice that they had been drinking at all? A. Well, some.

Q. Who appeared to be the most intoxicated? A. Well, I couldn't say they were intoxicated.

Q. Well, who showed the signs of the liquor most of the party?
A. Well, I couldn't say.

Q. Did they all show signs of having used liquor? A. Yes, sir.

Q. Well, how did you notice it, how did you detect it? A. Well, the eyes.

Q. What else? A. That's all.

Q. Anything about their speech, or their manner, or their walk, or anything of that kind, that indicated it to you? A. No, sir.

Q. You noticed the signs of liquor by their eyes? A. Yes, sir.

Q. You were not at all excited that morning, were you? A. No, sir.

Q. Took it as a matter of course? A. Yes, sir.

Q. Just discussing the matter ordinarily, as you are here to-day?
A. Yes, sir.

Q. Were all the rest of the people in town as collected about it as you were? A. Yes, sir.

Q. Wasn't any excitement around there at all? A. No, sir.

Q. The fact of finding Mrs. McCloud's body up on the hill dead didn't attract much attention anyway, did it? A. Well, it attracted attention.

Q. They discussed it just as they would any matter of business?
A. Yes, sir.

Q. No theories offered by anybody, how it was done? A. No, sir.

Q. You did not see Dr. Upton that day, did you? A. Yes, sir.

Q. Didn't see Mr. Irving, did you? A. Yes, sir.

Q. What did they say about it? A. I didn't hear what they said.

Q. Did you say anything to them? A. No, sir.

Q. They were present when O'Neil was, weren't they? A. In front of the hotel; yes, sir.

Q. They were doing most of the talking there, weren't they? A. Not that I know of.

Q. Who was doing the talking? A. Well, O'Neil asked me how she lay, and I explained to him.

Q. I asked who was doing the talk. Keep right on. That is right. O'Neil asked you how it lay, and you explained to him? A. Yes, sir.

Q. Who was doing the talking? A. I couldn't say.

Q. You didn't hear anybody else say a word? A. I might have heard somebody else say a word, but I didn't notice every word.

Q. You didn't hear anybody else discuss anything about it? A. No, sir.

Q. You didn't hear Dr. Upton say that they say that she had a fainting spell, and wandered down over the rocks and died? A. No, sir.

Q. You didn't hear Mr. Irving remark on that, did you? A. No, sir.

Q. Did you see Edward Joyce there? A. I don't remember.

Q. Who else did you see there besides Dr. Upton and Mr. Irving? A. Eddie Haller.

Q. You saw Eddie Haller there? A. Yes, sir.

Q. Did you talk this matter over with Eddie Haller? A. No, sir.

Q. Whom did you talk it over with? A. Depledge.

Q. Who else did you talk it over with besides Depledge? A. I don't remember afterwards.

Q. Who was the first person you talked this matter over with, — what you heard O'Neil say there after you got there? A. I don't remember.

Q. Who was the next person you talked with? A. Well, I went down to the shop to get my pay afterwards; I don't remember who I did talk to; I talked when I got home.

Q. You testified before? A. At the hearing; yes, sir.

Q. What hearing? A. Well, I don't know, — inquest.

Q. The inquest in Buckland? A. Yes, sir.

Q. You haven't testified at any other hearing, have you? A. At the inquest.

Q. Did you testify before the grand jury? A. Yes, sir.

Q. Now, whom did you talk with just before you testified at the inquest? A. I don't remember.

Q. Telling it to-day just the same way as you did at the inquest? A. Yes, sir.

Q. Telling it to-day just the same way that you did before the grand jury? A. Yes, sir.

Q. Certain? A. Yes, sir.

Q. No difference whatever? A. No, sir.

Q. You kept it right in mind all the time? A. Yes, sir.

Q. Telling to-day just as you told it to the first person you talked with that wanted you to attend the inquest? A. I don't understand you.

Q. Who came to you and told you to attend the inquest? A. I got a summons.

Q. Did the officer talk with you before you got the summons? A. No, sir.

Q. So you came down street? Who met you when you started down from your home that Friday morning? A. Saturday morning.

Q. Well, Saturday morning. A. O'Neil was the first one that I remember, Morrissey and Woodward.

Q. Those are the first ones you remember meeting? A. Yes, sir.

Q. The first information you got of the body being found, of Mrs. McCloud's body being found, was given after 9 o'clock. Mrs. Meyer opened her window, and screamed across there that Mrs. McCloud's body was found up there on the hill? A. Yes, sir.

Q. Then you walked up there, and stayed there fifteen minutes or so, and it took you about ten minutes to walk up there? A. Yes, sir.

Q. You came back again? A. Yes, sir.

Q. And waited twenty-five or thirty minutes round home? A. Twenty or twenty-five.

Q. That would make somewhere in the neighborhood of an hour from the time you went up there? A. Yes, sir.

Q. And coming down you never met a person from the village running up to the scene where that body was? A. That I won't say.

Q. Didn't you just say the first person you met was Jack O'Neil? A. The first I remember meeting.

Q. Didn't you pass any persons on the way? A. I might have.

Q. Didn't you pass several people on the way? A. I ain't positive.

Q. Did you see one, Mr. Pfersick? A. I saw him up there with the body.

Q. Did you see Mr. Meyer? A. I don't remember seeing Mr. Meyer.

Q. You didn't see any one on the way up that you remember at all? You didn't speak to anybody coming down from your house, right down Clement Street, round across the bridge? A. No, sir.

Q. And you didn't address any one till you came to O'Neil? A. No, sir.

Q. And you were going along up the street, and you saw them come in off Water Street, and you just said "Hello" to them? A. Yes, sir.

Q. Then you said, "Have you heard of the finding of the body of Mrs. McCloud?" A. Yes, sir.

Q. And somebody spoke up in the party, and said "No?" A. The three, I think, said "No."

Q. All three said it together? A. Yes, sir; pretty near together.

Q. Yes, it was a unanimous chorus of voices there? A. Yes, sir.

Q. And they all said "No" together. And then you went to work and explained to them about your going up there, and all about it? A. Yes, sir.

Q. Had quite a conversation with them? A. Well, a little conversation; five minutes, perhaps ten.

Q. And you were the principal talker? It was information they were looking for? A. Yes, sir.

Q. They didn't know anything about it? A. They didn't.

Q. Hadn't heard a thing about it? A. That is what they said.

Q. And of course you were imparting information? A. Yes, sir.

Q. Now, tell us all that five minutes' conversation that you had there. A. Well, I asked them if they heard about finding the body of Mrs. McCloud.

Q. Never mind about that. Start right in, and tell us what you said in the conversation to them? A. Well, I told them about Dr. Canedy going up there, and Mr. Crittenden starting to walk away with the hat, and Dr. Canedy calling him back and showing him the marks on her neck, and O'Neil said, "What is this town coming to? A man's life isn't safe." He wanted to know who this Mrs. McCloud was. I told him it was Mr. Crittenden's oldest daughter, the one that was married. He said, "The one that her husband got killed about seven years ago?" and I said yes, it was.

Q. Well, you said they appeared perfectly sober and all right? A. Yes, sir.

Q. Still, you noticed liquor on them? A. I did.

Q. You didn't notice any particular odor about the breath? A. No, sir.

Q. Just by their eyes? A. Yes, sir.

Q. And then you passed along up the street, and who was the next party that you talked with? A. O'Neil.

Q. O'Neil was the next man you talked with? A. Yes, sir.

Q. Whom did you see between the time you left him on the corner of Water Street and when you got up next to the hotel? A. Joe Glassett and Atkins.

Q. Say anything to them? A. Well, spoke with them about it.

Q. Tell them what you had seen? A. Yes, sir.

Q. So you did talk with two others before you talked with O'Neil again? A. Yes, sir.

Q. Did you tell those two all about everything you had done and saw there, etc.? Just as you had told the party before? A. I did.

Q. Well, now, who was the next party you saw, before you saw O'Neil, and talked with? A. They were the only two.

Q. Didn't have anything particular to do that morning? A. No, sir; to get my pay.

Q. Just were imparting that information to whomsoever wanted to talk with you? A. Yes, sir.

Q. And you didn't hear Dr. Upton say anything? A. I don't remember it; no.

Q. Didn't he or Mr. Irving say anything? A. No, sir.

Q. You didn't hear any one in that crowd in front of the hotel? How long did you stay there? A. In front of the hotel?

Q. Yes. A. Well, about five minutes.

Q. Did you see anything of a policeman? A. Yes, sir.

Q. What did he do? A. Told us to move off the sidewalk, and we separated.

Q. There were enough people there so it blocked the sidewalk up, weren't there? A. Yes, sir.

Q. Perfectly calm? A. They were.

Q. No excitement about them? A. Well, they were probably excited some.

Q. Oh, they were. Now, how many people, to your best knowledge, were there there? A. Oh, probably a dozen, probably more.

Q. Would a dozen block that sidewalk up there thoroughly in front of the hotel? A. They would, standing the way they were.

Q. Were there more than a dozen there? A. Might have been.

Q. Might have been twenty-five? A. No, sir.

Q. You would not put it at twenty-five? A. No, sir.

Q. And you never heard a word said by anybody of those dozen or more people, according to your statement, by a single person, only what O'Neil said? A. I don't remember.

Q. Don't remember hearing any conversation. You didn't talk with anybody? A. No, sir.

Q. You didn't talk with anybody there? A. No, sir.

Q. Did you talk with anybody afterwards, after you left that point? A. I don't remember.

Q. Talk with O'Neil again? A. No, sir; only saw him once afterwards.

Q. How long was it between the time when you were talking on the corner of Water Street and the time that you talked with O'Neil in front of the hotel? A. Ten or fifteen minutes.

Q. Ten or fifteen minutes. Now, Mr. Shaw, didn't O'Neil say to you, calling the name of a person, "Wants to know about this?" A. No, sir.

Q. Didn't O'Neil say that a certain person sent him to find out about it? A. No, sir.

Q. Did not? A. No, sir.

Q. You noticed particularly the direction from which he came, — the direction from which O'Neil came? A. Yes, sir.

Q. You noticed that he came up Water Street? You are sure of that? A. Yes, sir.

FRED DEPLEDGE — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. Fred Depledge.

Q. Where do you live? A. Northampton, Mass.

Q. Where were you on Saturday, January 8? A. Shelburne Falls.

Q. With whom were you on the morning of Saturday? A. Joe Shaw.

Q. Whether or not you went up to the place where Mrs. McCloud's body lay? A. I did.

Q. And with him? A. Yes, sir.

Q. And whether you stayed there a few minutes? A. I did.

Q. About how many were there when you reached there? A. I should think about four.

Q. And whether others came while you were there? A. They did.

Q. And about what time did you go down into the village? A. Well, it would be between half-past 9, — well, somewhere around half-past 9, or 9 o'clock; I wouldn't say.

Q. Did you meet John O'Neil and see him? A. I did.

Q. State the circumstances, whom he was with, and the talk. A. I couldn't name the man, because I don't know him; I was a stranger in the city.

Q. Whether you saw a man who was called John O'Neil? A. I did.

Q. And where? A. Right on Jenks's corner, at the shoe store.

Q. Whether there were others with him? A. There was.

Q. How many were gathered there, — about how many? A. Well, about four, — three or four.

Q. And whether others gathered afterwards, as you talked? A. They did.

Q. Whether Shaw had a conversation with John O'Neil? A. Yes, sir; he did.

Q. Well, now, will you please state that conversation, what you heard of it. A. Let's see, — well, he asked him if they heard about finding Mrs. McCloud's body.

Q. What was the answer? A. They said they did not, and some one in the crowd asked who she was, and Mr. Shaw explained it to them, who it was; and then it was asked whereabouts was it found, and it was explained to them; and then John O'Neil asked how she was laid, and it was explained to him how she was laid.

Q. What did he say? A. He said that — he said that she was laid on her back, and that her feet was towards the city, facing towards the city, and that her hat was one side and her veil was one side; that is all I remember of them saying.

Q. What, if anything, did John O'Neil reply to that? A. I don't remember anything.

Q. Whether or not you saw John O'Neil at another place? A. I did.

Q. Where? A. Near the hotel.

Q. Now, state what, if any, conversation was had with him there.

Tell it all, now. A. He asked how she was laid, — that is all I can remember; and Mr. Shaw explained it to him once more.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). How many people did you meet coming down from Mr. Shaw's house? That was Hill Street, wasn't it? A. What is that, please?

Q. Do you know where Mr. Shaw's house was? A. Yes, sir.

Q. How many people did you meet coming down from there? A. I don't know; I didn't count them.

Q. Met quite a number, didn't you? A. Not that I know of; I didn't notice.

Q. Busy talking with Mr. Shaw? A. No, sir; I wasn't.

Q. How did you come to be with Joseph Shaw that morning? A. Well, I was stopping at his house.

Q. Stopping there? A. Yes, sir.

Q. Did you ever see John O'Neil before that morning? A. No, sir.

Q. And you only know that it was John O'Neil that you are talking about now by what Mr. Shaw told you, don't you? A. Well, how I come to know it, the crowd was asking him by the name of Jack O'Neil; that is how I come to know his name was Jack O'Neil.

Q. How big a crowd was there? A. When we got there?

Q. Yes. A. There was four, I believe.

Q. Now, how big a crowd was there down by the corner of Water Street, down where you first met the party you call Jack O'Neil? A. There was four when we first met them.

Q. Four of them when you first met them. Now, who first spoke? A. Mr. Shaw first spoke.

Q. What did he say? A. He asked them if they heard of the death of Mrs. McCloud.

Q. What did they say? A. They said "No."

Q. All of them? A. Yes, sir.

Q. All spoke together? A. All about the same time.

Q. Spoke right up and said "No," four voices spoke up there, did they, and said, "No?" A. Yes, sir.

Q. Well, and he described to them the finding of the body up there? A. He did.

Q. Well, what did you do after that? A. Well, we stayed there a while.

Q. Talked matters over, the six of you? A. Yes, sir.

Q. There wasn't anybody else there? A. Well, there was quite a crowd gathered round there.

Q. Did anybody else say anything about it? A. Well, I won't say for sure; I don't remember.

Q. Did anybody else ask Mr. Shaw anything about it? A. There was; there was some one else, I couldn't state who.

Q. Right there at the corner where you met the four, some one else asked Mr. Shaw about it? A. Yes, sir.

Q. Now, you don't know who that was? A. No, sir.

Q. What did he say, this some one else? A. I can't remember.

Q. What did Mr. Shaw say to him? A. I can't remember.

Q. Why, Mr. Shaw was telling all about it to everybody that wanted to know, wasn't he? A. Yes, sir.

Q. He was the only one round there that knew anything about it? A. He was not.

Q. Others then had come down from there? A. Yes, sir.

Q. Exchanging ideas and opinions, were they, as to the method of death? A. I won't state, because I don't remember.

Q. Did you hear anybody express an opinion as to how Mrs. McCloud died? A. I did not.

Q. Didn't hear any one give an opinion about it? A. No, sir.

Q. Well, where did you go after you left that corner? A. We walked up as far as the hotel.

Q. What did you see and do there? A. Well, there was a crowd gathered round there, talking over the matter.

Q. How big a crowd was that? A. Quite a few.

Q. Bigger than the other crowd? A. Yes, sir.

Q. How many were there in the other crowd on the corner, — ten or twelve? A. There was about four when we first got there, and then there was a crowd gathered.

Q. Well, you met four, and your party made six? A. Yes, sir.

Q. How many were there when you broke up on that corner? A. I couldn't state.

Q. Twice as many as when you met? A. I won't say.

Q. To your best judgment? A. Well, I should say about fifteen.

Q. About fifteen on the first corner. So before you and Mr. Shaw left the first corner there were about fifteen people there? A. There was.

Q. Then where did you go? A. To the hotel there, right there at the hotel.

Q. And there was a bigger crowd there than there was down below? A. Yes, sir.

Q. Twenty-five people there, do you suppose? A. Well, there would be that, anyway.

Q. There would be all of twenty-five? A. There would be that.

Q. That and more? A. Yes, sir.

Q. And the crowd kept assembling, didn't it? A. Well, yes; they came along.

Q. A good many people talking all at once, wasn't there? A. Yes.

Q. And in the general jumble of voices you couldn't be sure just who was speaking, could you? A. I could not.

Q. Did you hear anybody express an opinion there that Mrs. McCloud wandered down over the rocks and died? A. Not that I remember.

Q. Did you hear anybody talk about that at all? A. Not that I remember.

Q. Did you hear an opinion expressed about the means of her death? A. I did not.

Q. What were they talking about? A. I couldn't say, because I wasn't interested in the case.

Q. You didn't pay any particular attention to it? A. I did not.

Q. Nothing out of the ordinary to find a woman's body up on the hill, was it, dead? A. No, sir.

Q. What? A. I see the body.

Q. I say, it is nothing out of ordinary, that would excite you at all? A. Well, I didn't mind it, because she was no relative of mine; I didn't have anything to do with it.

Q. No relation of yours, and you didn't mind it? A. No, sir.

Q. And you didn't pay any particular attention to what was said, anyway, did you? A. I did not.

Q. And there might have other people talked just as much as O'Neil to Shaw, for all you know? A. They might have done; yes, sir.

Q. And, the conversation being general there, there was some of it might have been from some one else that you thought came from O'Neil, mightn't it? A. I won't say, because I don't know.

Q. You don't know particularly just what did come from O'Neil, do you? A. I do not.

Q. And you can't swear positively, can you, O'Neil said anything more than anybody else? A. In the first place, I can.

Q. Well, more than any one else did? A. Yes, when I was there; where I first met him, I can.

Q. Well, in the second place, did he? A. Not that I know of.

Q. He asked for information in the first place, didn't he? A. He did.

Q. And he got it from Mr. Shaw? A. Yes, sir.

Q. That was what he was looking for then, was information, wasn't it? A. I don't know.

Q. Well, from his actions and what he said? A. Yes.

- Q. And you didn't hear him say anything different from any one else after he got that information, did you? A. Not that I know of.
- Q. People were generally excited, the natives, the people that lived there in the town, weren't they? A. Yes, sir.
- Q. A good deal of excitement around there, wasn't there? A. Yes, there was.
- Q. And they were freely giving opinions, weren't they? A. They were, sir.

JOHN L. HALLER — *sworn*.

- Q. (by Mr. KNOWLTON). Your name is John Haller? A. John Haller, sir.
- Q. You live in Shelburne Falls? A. Live in North Adams.
- Q. Were you in Shelburne Falls last January? A. Yes, sir.
- Q. Was that your pool room? A. No, sir; my father's.
- Q. Do you remember the night when Mrs. McCloud disappeared, Friday night? A. I was there at Shelburne Falls.
- Q. Were you in that pool room? A. What time?
- Q. Well, did you go into the pool room that evening? A. Yes, sir.
- Q. What time did you go there? A. I left home at twenty-five to twenty minutes of 7.
- Q. And what time did you get to the pool room? A. I couldn't tell you.
- Q. Did you go right to the pool room? A. Yes, sir.
- Q. How far away did you live, — a short distance or quite a ways? A. Oh, it is half a mile to three-quarters.
- Q. And when you got there did you stay there? A. Stayed till quarter-past 10.
- Q. Were you running the room, or just there visiting? A. Well, just visiting; but I run it that night when my brother went to the jail.
- Q. Did you know Mr. O'Neil, the defendant? A. Yes, sir.
- Q. Did you see him there that night? A. Yes, sir.
- Q. When did you first see him? A. Between 8 and half past.
- Q. What happened then? A. Nothing, only he stuck his head in the door and called my brother out.
- Q. Do you remember what he said to him? A. No, sir.
- Q. Is that the brother that was talking of going to Buckland that night? A. To a dance?
- Q. Yes. A. Yes, sir.
- Q. Which one is that, Eddie? A. Yes, sir.
- Q. And was that the first you saw of O'Neil that evening? A. Yes, sir.

Q. You had been in the pool room all the evening until that? A. That time that I stated.

Q. You left home twenty-five minutes of 7, you say? A. Twenty-five to twenty.

Q. Of 7? A. Yes, sir.

Q. Which side do you live on, Buckland or Shelburne? A. Lived on the Buckland side.

Q. What street was it on, Mr. Haller, then? A. Well, I couldn't tell you the name of the street; it is the old Conway road.

Q. A little out of the village? A. Yes, sir.

Q. Half a mile, you say? A. Half a mile to three-quarters.

Q. Did you see anything more of him afterwards? A. Yes, sir.

Q. What more did you see of him? A. He came in once or twice while I was there, perhaps three times.

Q. Do you remember that anything happened when he came in any other time? A. No, sir; only his saying something about a wound on his head.

Q. What did you hear about that? A. Well, there was one or two that looked at, examined it.

Q. Did you? A. No, sir.

Q. Did he say how he got it? A. He said — I believe he said, that he fell against the coal box.

Q. That is all you remember his saying? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). Do you remember whether he said he fell against the coal box, or corner of the shed? A. I couldn't swear.

Q. Might have said either? A. He might; yes, sir.

Q. But you remember his saying about falling against something? A. Yes, sir.

Q. When he made that statement, was it after the second, or third time that he came in there? A. Well, it was after the first time.

Q. Wasn't it after the second time? A. I couldn't tell you.

Q. You couldn't swear positively? A. No, sir.

Q. Now, you got to the pool room some time about 7 o'clock? A. I said I left the house from twenty-five to twenty minutes to 7.

Q. Well, you have walked from the house to the pool room a good many times, — how long did it take you to walk up? A. Might take from ten to fifteen minutes.

Q. You got there somewhere around 7 o'clock? A. Yes, sir; around the neighborhood of 7 o'clock.

Q. What was your brother doing when you got there? A. Playing pool.

Q. Whom with? A. Vice.

Q. What did you do, if anything, after you got there? A. Gave my brother his supper; when he finished, I played.

Q. You went to playing with Vice? A. Yes, sir.

Q. How many games did you play with Vice? A. I don't remember.

Q. Well, played all the evening, didn't you? A. Played, and he went out and came back again.

Q. You played about all the evening? A. Yes, until between 9 and 10.

Q. Did you play with anybody else while he was out? A. No, sir.

Q. The table was not in use then? A. No, sir; not as I remember.

Q. Did you go out? A. I did at a quarter-past 10.

Q. You were interested in pool, principally? A. Yes, sir.

Q. While Vice was out, what were you doing? A. Sat down.

Q. Reading the paper? A. No, sir.

Q. Talking with anybody? A. Yes, sir.

Q. Who? A. Shaw and Morrissey.

Q. What Morrissey? A. William Morrissey.

Q. Which one is that? Live in Buckland or Shelburne? A. I suppose his home is in Buckland, but he lived on the Shelburne side.

Q. That the one who lives back of the hotel? A. Boards at Brigg's, I believe.

Q. You were talking with those people? A. Yes, sir.

Q. As soon as Vice got back — A. We went to playing again?

Q. How long had you been playing after Vice got back before you saw O'Neil? A. I couldn't tell you.

Q. Half or three-quarters of an hour? A. I couldn't tell you.

Q. No way of measuring the time? A. No, sir.

Q. How many games had you played? A. I told you I didn't know.

Q. Do you know how many games you had played before you saw O'Neil? A. No, sir.

Q. And you have no way of fixing in your mind how many games you had played, what time it was when Vice left or what time it was when Vice got back? A. No, sir.

Q. And you had no way of fixing in your mind how long you were playing with Vice? A. No, sir; I couldn't tell you.

Q. Nor you couldn't give any fractional part of the time that you played with Vice, can you? A. Well, I told you I went home at quarter-past 10.

Q. Now, have you any definite way that you can fix in your mind, dating back from the time that you were playing with Vice? A. Well, quarter-past 10 I was playing with him.

Q. Can you tell, dating back from quarter-past 10, that you were playing with Vice, back to the time that you saw O'Neil? A. No, sir

Q. Then how is it that you fix in your mind the exact time that you saw O'Neil? A. I didn't say; I said it was between 8 and half past.

Q. How do you know it was between 8 and half past? A. How do I know?

Q. Yes, how do you know, of your own knowledge? A. It was after — it was between 8 and half past; that is what I said.

Q. What you have heard somebody else say, isn't it? A. No, sir.

Q. How do you know? A. Because I was there.

Q. Well, how do you know the time? A. Because it was — well, it was when they all come back from the mail, and it was some time before they got back.

Q. The way you know, then, is from the time that they had all got back from the mail? A. Yes, sir.

Q. Do you know what time it was that they got back from the mail? A. No, sir; I couldn't swear.

Q. You don't know, then, how long they were gone to the mail? A. No, sir.

Q. Then how do you know what time it was that O'Neil came there, only what you have heard? A. Because I was there, that is all; only guessing about what time it was, about from 8 to half past.

Q. You are only guessing? A. Yes, sir.

Q. You will not swear that it wasn't about 8 o'clock? A. No, sir.

Q. It might have been quarter of 8? A. I don't think it was.

Q. Well, you can't swear it was not? You are only guessing it? You have no means of fixing it in your mind, except the time the boys were coming back from the post-office? A. Will you ask the question again?

Q. You had not any means nor did you consult any means, to fix in your mind when you saw O'Neil, outside of the fact that the boys were coming back from the post-office, had you? A. No, sir.

Q. Can you tell me who was in the pool room that evening? A. I can tell you some of them; I don't know as I can tell you all.

Q. Pretty well acquainted around there, aren't you? A. Yes; it is quite a while ago; I don't remember.

Q. Worked most of your life there? A. Well, worked in different places.

Q. Tell me who were in there? A. Morrissey, Will Morrissey, Shaw, my brother Ed, Adolph, and Vice and myself.

Q. Remember any one else? A. I think Charles Woodward was there.

Q. You knew William O'Connell, didn't you? A. No, I didn't; he wasn't there when I first got there.

Q. Did he come in? A. He was there that evening; yes, sir.

Q. Did he come in before the boys went out to the post-office? A. I couldn't swear.

Q. Did he come in and stand by the stove about the time the boys went out to the post-office? A. I believe he stood there when they come back.

Q. He was standing by the stove when they came back from the post-office? A. Yes, sir.

Q. Did you notice with whom he was talking? A. I couldn't tell; no, sir.

Q. Did you notice who stood beside him at the stove? A. I couldn't tell who stood beside him at the stove; no, sir.

Q. Did you notice any of the gentlemen who stood around the stove there just before the boys went out to the post-office, and just after they came back? Now, give me the names of some of them, if you can. A. Before?

Q. Well, just before they went out to the post-office, and just after they came back. A. Well, I couldn't tell you whether they were there before, or whether it was when they came back. Mr. Fritz was there.

Q. Mr. Fritz wasn't by the stove, was he? A. He was sitting on the east side of the pool room, — north-east side.

Q. Well, that is over away from the stove? A. Towards the back door.

Q. The stove is on the north-west side, isn't it? A. The north-west corner; yes, sir.

Q. Well, Fritz was across the room, wasn't he, at the east side near that door? A. Near that iron post, near the stove.

Q. I am asking you who was around the stove. Now, weren't there three or four sitting and standing around the stove there? Now, let us see if you can't remember some of them. A. I don't know as I can, only Fritz and my brother was sitting there.

Q. William O'Connell might have been there, mightn't he? A. I couldn't tell you.

Q. You did see him there? A. I told you, after the mail.

Q. After the mail? A. Yes, sir; I thought it was after the mail.

Q. How long had the boys gone out for the mail? A. I couldn't tell you; perhaps twenty minutes.

Q. Did you pay much attention to who was in that room that night? A. No, because I was busy playing pool.

Q. A good many people could have come in there and gone out and you not know anything about it, couldn't they? A. I might have glanced at them, and not paid much attention to them.

Q. And not remembered it? A. No.

Q. You paid no more attention to who came into that room and went out, if you knew them, than you would a man whom you met every day for a month if you passed by him on the street this noon, would you? A. No, sir.

Q. You can't swear positively that O'Neil wasn't in that pool room before the time when the boys were coming back from the post-office, can you? A. The first I saw of him —

Q. Well, the first you saw of him was after the boys were coming back from the post-office? A. Yes, sir.

Q. And that was when he stuck his head into the door and called out your brother? A. Yes, sir.

Q. But you can't swear but that he was in there before, can you? A. No, sir.

Q. Nor you wouldn't swear but that he was in there before, would you? A. No, sir.

Mr. DOWLIN. That is all.

Q. (by Mr. KNOWLTON). Did you know about your brother's expecting to go to Buckland that night? A. He said something about going to Buckland.

Mr. BEER. We object to what was said.

RICHARD TALBOT — *sworn*.

Q. (by Mr. KNOWLTON). Your name is Richard Talbot? A. Richard Talbot.

Q. Where do you live? A. In Deerfield.

Q. What is your business? A. I work on a farm.

Q. For whom? A. Dwight Hawkes.

Q. Do you know Mr. Curtis? A. I do.

Q. His first name? A. Walter Curtis.

Q. Did he live near you? A. He does.

Q. Did you see him this week any time? A. I have.

Q. What day? A. I saw him Monday and Wednesday.

Q. Did you have any talk with him, — say Wednesday, — did you have any talk with him in relation to Mr. O'Neil? A. He said —

Mr. BEER. We object.

SHELDON, J. What is the objection?

Mr. BEER. Mr. O'Neil was not there.

SHELDON, J. This is offered, I suppose, simply to contradict the testimony of Mr. Curtis.

Mr. KNOWLTON. That is the whole purpose. Shall I proceed?

SHELDON, J. Proceed.

Q. Now, go on, sir. A. He said Mr. O'Neil told him that he would be willing to take ten years without the case coming into

court, if it come into court he would get twenty-five; that — that Mr. O'Neil said he couldn't see how they could convict him, how they could hang him, because O'Connell done the choking and O'Connell had the money. He said that Mr. O'Connell also said that he had told this to his counsel.

Q. You don't mean Mr. O'Connell, probably? A. I mean Mr. O'Neil, — that he had told this to his counsel.

Q. That is all? A. That is all.

Q. Was Mr. Hawkes present? A. He is.

Q. Was he present at this time? A. He was.

Q. This was day before yesterday? A. Day before yesterday.

Q. What time of day? A. About 11 o'clock.

Q. In the forenoon? A. In the forenoon.

Cross-examination.

Q. (by Mr. DOWLIN). What is your name? A. Richard Talbot.

Q. Where do you live? A. In Deerfield.

Q. How long have you lived there? A. Since the first of June.

Q. Where did you come from to Deerfield? A. I was at college in Philadelphia.

Q. What kind of a college? A. Well, Temple College Law School.

Q. And you are working over here in Deerfield? A. Yes, sir; through vacation.

Q. And you got to talking with Curtis, did you, and he is working over there? A. He was.

Q. At the same place that you were working at? A. Yes, sir.

Q. And do you know who this Curtis is? A. Why, I know him by reputation, that is all; I never met him until about two weeks ago.

Q. Why, how did you know him by reputation? A. I have heard people speak of him.

Q. Is he a man of business? A. He is not.

Q. A laborer? A. A laborer.

Q. And his reputation was called to your attention? A. Why it wasn't called particularly to my attention, but I have heard the remark made about his reputation.

Q. What remark have you heard made about his reputation? A. His reputation wasn't very good.

Q. And you were quite friendly with him, were you? A. No, not particularly; I was working in the same field with him.

Q. Working in the same field, and on good terms? A. On good terms; yes, sir.

Q. And quite friendly with him, weren't you? A. Why, I don't know whether you would call it friendly, or not; we would talk back and forth.

Q. You exchanged confidences there? A. Yes, sir.

Q. He told you little things of his life, and you told him little things of your life? A. No, sir.

Q. How did you come to talk with him about this case? A. Why, some one made the remark that the evidence was not sufficient to convict O'Neil, and he said that O'Neil never could be hung; and some one, I don't know which one, said that —

Q. Some one? A. Some one of us.

Q. Was it Curtis? I am not asking —

Mr. KNOWLTON. I beg your pardon; you asked him how he came to talk about it.

SHELDON, J. Yes; this seems to be competent.

A. Same night Curtis said that O'Neil would never be convicted, — evidence was not strong enough to convict him. Curtis said, "He may be convicted, but he never will be hung." Some one else says, "How do you know he never will be hung?" "Because he told me this story himself," and then he went on and told the story I have told you.

Q. It never struck your mind that Curtis was lying to you? A. It struck my mind that he might have been.

Q. You didn't put much stock in it, did you? [Objected to.]

SHELDON, J. That is not competent.

Q. Curtis said that this conversation took place in the jail. A. In the workshop of the jail.

Q. Were you the party that informed the officers what Curtis told you? A. I was.

Q. You took quite an interest in this case, didn't you? A. No further than that.

Q. Took interest enough to come up from Deerfield and tell the officers what Curtis had told you? A. I was coming up here, anyway.

Q. Yes, but you went and found the officers and told them what Curtis told you? A. Yes, I told them what Curtis told me.

Q. When did you do it? A. On the same evening.

Q. When was that? A. Wednesday evening of this week.

Q. When did you have the talk with Curtis? A. About 10 o'clock Wednesday.

Q. How long had you ever been in Deerfield? A. Oh, came there the 1st of January this year, and worked there last year four months through vacation.

Q. Are you acquainted around Greenfield any? A. I am.

Q. Ever been around in any of the law offices here? A. I have not, except in this case.

Q. Were you around any of them last summer? A. I was not.

Q. Around any of them this year? A. I was not, except in this case, that is all.

Q. How long have you been around the offices in this case? A. Not more than half an hour, not more than an hour at most; only at one time, that is all.

Q. That is when you came up and gave your information? A. That is when I came up and gave my information.

Q. Whom did you say you were at work for down there? A. Dwight Hawkes.

Q. How many of you were talking together there? A. Four.

Q. And Curtis was sort of telling the story to the party? A. Nothing further than that; he told this story to the party.

Q. To the party there? A. Yes, sir.

Q. And was making it just as sensational as he could, wasn't he? [Objected to.]

SHELDON, J. Ask what he said; the rest is not competent.

Q. What was his manner when describing it? A. Why, he was working at the same time; he had a pitchfork in his hand, turning over hay; he didn't pause.

Q. He was working? You people kept right on working? A. Yes, sir.

Q. All four working right along together, turning over hay? A. Yes, sir.

Q. He kept right on working and talking? That was his manner in describing it? A. That was his manner in describing it.

Q. Didn't any one pay any particular attention to it? A. Mr. Hawkes told him he ought to be up here in Greenfield, instead of there. He said O'Neil had already told his counsel this story, and he didn't think so.

Q. Yes, and you believed all that, I suppose. [Objected to.]

SHELDON, J. You need not answer that. That has been ruled upon, Mr. Dowlin, and should not be repeated.

MR. DOWLIN. Excuse me.

Q. And was that all the conversation you heard? A. That was all I remember.

Q. How long did you say you had known Mr. Curtis? A. Not more than two weeks.

Q. And did you work for the same employer last year as you are this year? A. I did.

Q. What is his name? A. Dwight Hawkes.

DWIGHT HAWKES — *sworn*.

Q. (by Mr. KNOWLTON). Your name is Dwight Hawkes? A. Yes, sir.

Q. You live in Deerfield, Mr. Hawkes? A. Yes, sir.

Q. Carry on a farm there? A. Yes, sir.

Q. Does Mr. Talbot work for you? A. Yes, sir.

Q. Mr. Curtis also? A. He has worked a few days.

Q. Was he working for you Wednesday? A. Last Wednesday?

Q. Yes. A. Yes, sir.

Q. Did you hear him say anything about this O'Neil matter? A. I did.

Q. Tell what you heard him say, — all the talk that was had. A. I was talking on this case, and he made the remark that he was up in the jail work shop, he said, last January, and that O'Neil told him, in the presence of Davis, the wooden-legged man, and Schenck, or some such name as that, — I believe it is Schenck, — that O'Neil told him that he didn't see why he should be hung, because, or words to that effect, — I think those were the words he told me.

Q. Anything else? A. Yes, that, — why, that, —

Q. Did you say anything? I thought you said something. A. Well, it doesn't occur to me.

Q. Are you trying to think of the name? A. No, I am trying to think of the exact words.

Q. Oh, well, give the substance of it, if you can, if you cannot give the exact words. A. He says that O'Neil says he didn't know why he should be hung; that O'Connell shut off the wind.

Q. Anything more? A. Why —

Q. Anything about money? A. No, sir; I don't recall anything else.

[No cross-examination.]

RICHARD H. SCHENCK — *sworn*.

Q. (by Mr. KNOWLTON). Your name is Richard H. Schenck? A. Yes, sir.

Q. Where do you belong, Mr. Schenck? A. Conway.

Q. You are now serving in the State Prison? A. Yes, sir.

Q. Were you in jail here, or House of Correction, last February? A. Yes, sir.

Q. Do you know John O'Neil, the defendant? A. Yes, sir.

Q. Had you known him before you were in there? A. Well, I have seen him quite a number of times, but not to speak to him.

Q. Did you hear him say anything about this case? A. We had a conversation once.

Q. Tell all that you remember that he said, and all that was said to him. A. On February 22 we were up in the shop, some of the boys, and we had a conversation, Mr. O'Neil and I, and Davis and Curtis. We stood in the shop, and we were talking about his case. Davis asked me if I would take two years, and not go to trial. I says I wouldn't. Davis says he felt bad about Jack O'Neil. Davis went on and asked Jack if he would take ten years, and not

go down to trial at all, and he says he would; he says if they convicted me he would get probably twenty or twenty-five.

Q. Did he say anything more then, or at any other time? A. Well, he spoke a number of things then. After that Davis asked him if he done the choking, or if he knew anything about it, and he says he didn't do no choking; he didn't find himself guilty, and he didn't do anything else to her.

Q. Did he say anything more? A. Davis asked him what he done that night, and he says he was feeling pretty good; he went home and had supper, and came back and went down street, and had some more drink. Davis asked him if he ever saw the woman. He says, yes, he did. That is all I can remember about it.

Q. Did he say when he saw the woman? A. The same night, I believe the same night, after supper, when he came back from supper.

Q. Did he say anything about money? A. Well, he said he was broke, but he had plenty afterwards.

Q. Said what? A. He didn't have no money before, he was broke, but had plenty afterwards.

Q. Before what? A. He didn't say what.

Q. He said he didn't have any money before, but did afterwards?
A. Yes, sir.

Q. Did he say anything more? A. I don't believe I can remember anything else, that we had any more conversation this time.

Q. Do you remember any other talk you had? A. We had once a talk in jail, in the yard, and he says that he went over and tried to get a ticket, and he couldn't get it, and O'Connell went over and got a ticket for him, and he gave him the money.

Q. Did he say where he went to get the ticket? A. No, sir.

Q. Anything further? A. No, sir.

[No cross-examination.]

MATTHEW BOYLE — *sworn*.

Q. (by Mr. KNOWLTON). Your name is Matthew Boyle? A. Yes, sir.

Q. How old are you, Matthew? A. Fourteen.

Q. Where do you live? A. Green Street.

Q. How far from Mr. O'Neil's house? A. The third house below.

Q. That is the street he lives on? A. Yes, sir.

Q. And you live down the hill three houses? A. Yes, sir.

Q. Let me see, if I can see that map. You live near the head of Prospect Street? A. Yes, sir; right there.

Q. Do you remember the morning they found that body up in the woods? A. Yes, sir.

Q. Did you see Mr. O'Neil that morning? A. Yes, sir.

Q. Where did you see him? Where were you? A. Right down front of my house.

Q. You were standing there? A. Yes, sir.

Q. Where did you see him? A. Right there, too.

Q. Was he moving? A. Yes, sir.

Q. Which way was he going? A. Over towards the railroad crossing.

Q. Towards his house, or away from his house? A. Away from his house.

Q. What kind of a day was it? A. I couldn't say.

Q. Was it early or late in the forenoon? A. I couldn't say what time it was.

Q. Now, did he have any talk with you, or you with him? A. Yes, sir.

Q. What was said? A. He told me about Mrs. McCloud being found.

Q. What did he say to you? A. He says, "Is that so about Mrs. McCloud being found?"

Q. That is what he said? A. Yes, sir.

Q. What did you say? A. I said I didn't know.

Q. Do you remember any particular words he said? A. I don't know whether he said she was found or found dead up there in the woods.

Q. You don't know whether he said found, or found dead? A. No, sir.

Q. What did he do then? A. Went right along over towards the railroad crossing.

Q. Was he alone? A. Yes, sir.

Q. Was it in the forenoon or afternoon? A. Forenoon.

Q. You had not heard of it before? A. No, sir.

Q. You said you hadn't heard of it before? A. No, sir.

Q. What did you do then, after that? I ask you for the purpose of fixing the time of day. A. Went up and told my folks.

Q. About that time did you go to drive with your uncle? A. Yes, sir.

Q. How long afterwards? A. About five or ten minutes afterwards.

Q. What is your uncle's name? A. John Murphy.

Q. After you had talked with Mr. O'Neil? A. Yes, sir.

[No cross-examination.]

EDWARD STEMPLE — *sworn*.

Q. (by Mr. KNOWLTON). Your name is Edward Stemple? A. Yes, sir.

Q. How old are you, Mr. Stemple? A. Twenty.

Q. Do you remember the morning the body was found in the woods? You remember that day, do you? A. Yes, sir.

Q. Where do you live? A. On River Street.

Q. Did you see Mr. O'Neil that day? A. I saw him the next morning after the murder.

Q. That Saturday morning? A. Yes, sir.

Q. Where did you see him? A. By Mr. Jenks's store.

Q. Is that on the Shelburne side? A. Yes, sir.

Q. Was he alone, or was there somebody with him? A. There was a few fellows with him.

Q. Tell me who you remember. A. Dubsey Woodward and Joe Atkins.

Q. Did you have any talk with him about this body? A. No, sir.

Q. Of Mrs. McCloud? A. No, sir.

Q. Did he have anything to say to you about it? A. Yes, sir.

Q. What did he say? A. He asked me if I had heard the news, and I said, "What news?" He says, "One of the Crittenden girls got murdered last night."

Q. I guess you will have to tell that again. A. He asked me if I had heard the news, and I said, "What news?" And he said, "One of the McCloud girls got murdered last night," or "One of the Crittenden girls got murdered last night."

Q. What time in the forenoon was that? A. About 10 o'clock; I couldn't swear it was 10 o'clock, — somewhere around there.

Q. Had you then heard of it? A. No, sir.

Q. What makes you think it was about 10 o'clock? A. Because I thought it was about 10 o'clock.

Q. That is, you had nothing special to fix it by? A. No.

Q. Did he come along to where you were, or did you go to where he was standing? A. I was going along when he was coming up.

Q. Which way was he coming, east or west? A. He was going north.

Q. On what street? A. River Street.

Q. On the Shelburne side? A. Yes, sir.

[No cross-examination.]

GEORGE E. DODGE — *sworn*.

Q. (by Mr. KNOWLTON). George E. Dodge is your name? A. Yes, sir.

Q. What is your business? A. I work in the cutlery there.

Q. You live in Shelburne Falls? A. Yes, sir.

Q. And do you remember Saturday, the day the body was found? A. Yes, sir.

Q. Did you see O'Neil that day? A. Yes, sir.

Q. When? A. A little after 12 o'clock.

Q. Where were you going? A. Going to dinner.

Q. And where was he? A. He was in back of Mr. Frost's livery stable.

Q. Frost's? A. Yes, sir.

Q. That is on the Shelburne side? A. Yes, sir.

Q. That clump of buildings around the Shelburne House there? A. Yes, sir.

Q. Whom was he with, or was he alone? A. He was with Jack Couard, Charlie Woodward and Joe Atkins.

Q. Did you have some talk with him? A. Yes, sir.

Q. Tell what he said, as nearly as you can remember it. A. He asked me what I thought about the case.

Q. Is that the first of it? A. Yes, sir. I asked him what case, and he says, "Mrs. McCloud, — Mr. Crittenden's daughter" I says, "I don't know, Jack." I said, "We heard she was murdered, and we heard she wasn't."

Q. That is what you said? A. Yes, sir.

Q. You said you heard she was, and heard she wasn't? A. Yes, sir. Well, he says, "She wasn't; Mr. Crittenden said so."

Q. What? A. He says, "She wasn't; Mr. Crittenden said so; she died a natural death;" said he had been expecting it, I think, for some time.

Q. I don't quite hear that. A. Said she had had one or two bad spells, and he had been expecting it.

Q. That is, Mr. Crittenden had been expecting it, I suppose you mean? A. Yes.

Q. He said that? A. Yes, sir.

Q. Did he say anything else? A. No; that is all, I believe.

Q. Did you have any more talk with him? A. No, sir.

Q. Did you see him again after that? A. Saw him after dinner.

Q. When you were going back? A. Yes, sir.

Q. Where then? A. He was on River Street.

Q. The same place? A. No, down opposite Mr. Raguse's.

Q. That is on the other side, or the same side? A. The same side.

Q. What talk did you have then? A. I didn't talk with him after dinner.

Q. Did you hear what he said to anybody else then? A. I heard him say to Mr. Jones that he hoped they would get the right fellow; heard him say so twice.

Q. And what did Jones say? A. Mr. Jones told him he didn't see as there was any one to get; she died a natural death.

Q. And what did Mr. O'Neil say then? A. That is all, I believe.

Cross-examination.

Q. (by Mr. BEER). Were you working on Saturday? A. Yes, sir.

Q. Where? A. At Lamson Goodnow Manufacturing Company, — cutlery.

Q. What is your business now? A. Well, I did milling mostly.

Q. How long have you worked there? A. About four years and a half.

Q. Whereabouts do you live, or did you live then? A. I lived there in Shelburne Falls.

Q. What street? A. On Main Street.

Q. You mean Bridge Street, or the street running off Bridge Street? A. I mean Main Street, running off from Bridge Street.

Q. Which way does it run? A. Well, it runs very near north and south there, I should judge.

Q. How far up Main Street do you live? A. Oh, it is probably twenty-five rods.

Q. Were you going to dinner when you first saw him? A. Yes, sir.

Q. Whereabouts did you see O'Neil? A. I saw him in back of Mr. Frost's livery stable.

Q. Is that on Main Street? A. No, sir; it is not; it is between Main Street and River Street.

Q. How came you in there? A. I kept my horse down in back by River Street, and went in there.

Q. Did you have your horse to the factory? A. No, sir; went there to feed it.

Q. And did you see him before you entered the stable to feed your horse? A. No, sir; I did not.

Q. What time was it that you left the factory? A. Twelve o'clock.

Q. How far is the factory from the stable? A. Oh, one-third of a mile, perhaps.

Q. How much? A. One-third of a mile, I should think.

Q. Which side of the river is it? A. Shelburne side.

Q. The factory? A. No; on Buckland side, the factory.

Q. Any way to come from the factory except to cross the large bridge there? A. No, sir.

Q. And you crossed that way? A. Yes, sir.

Q. You had heard about the death of Mrs. McCloud before this? A. Yes, sir.

Q. Talked about in the factory, had it been? A. Why, yes, somewhat; yes.

Q. How many persons worked in the room where you were working? A. I don't know; I should think fifteen or sixteen at that time.

Q. Men and women? A. Men and boys.

Q. Did your work confine you to one room? A. Yes, sir; mostly.

Q. Machinery going? A. Yes, sir.

Q. What time of the day did you hear about it first? A. Well, I couldn't tell; I should say somewhere about half-past 9 or 10 o'clock.

Q. Where were you? A. In the shop.

Q. Anybody working by you? A. Not very near; no, sir.

Q. Machinery going? A. Yes, sir.

Q. The hum and noise of machinery all the time, was there? A. Yes, sir.

Q. And it was near there you heard about it? A. Yes, sir.

Q. Who brought the news to you? A. Well, really I couldn't tell you who it was.

Q. How many spoke to you there about it? A. I couldn't tell you that, either.

Q. Was it the general topic of conversation in the mill before noon? A. Why, yes; they talked it considerably; yes, sir.

Q. And you left the mill and went directly to the stable, did you? A. Yes, sir.

Q. And you went into the stable before you saw O'Neil? A. Yes, sir.

Q. Where were you when you did see him? A. When I saw O'Neil?

Q. Yes. A. I was going through the alley back of Mr. Frost's barn.

Q. That was after you had fed the horse? A. Yes, sir.

Q. Which way did he appear to come? A. When I saw him?

Q. Yes. A. He stood there.

Q. Who were there? A. Jack Couard, Charlie Woodward and Joe Atkins.

Q. Did you see them doing anything? A. Some of them were sitting there and some of them were standing.

Q. Did you see them drinking? A. They had a bottle there; yes, sir; I didn't see them drinking, though.

Q. How long did you stay there? A. Oh, not over five minutes, I should judge.

Q. Did you tell them what you had heard? A. Yes, sir.

Q. And after that you went home? A. Yes, sir.

Q. When again did you say you saw O'Neil? A. After dinner.

Q. What time was that? A. Somewhere about half-past 12, I should judge.

Q. What time did you get dinner? A. Oh, I don't know; somewhere between ten minutes past and quarter past, — probably quarter past.

Q. You came from the factory, fed your horse, got to a house, had dinner by ten minutes past 12, — is that it? A. I was ready for dinner, yes, sir, by a quarter past, I should say.

Q. What time did you get through dinner? A. I think I came out of the house somewhere about half past.

Q. Where did you go then? A. I went and watered my horse.

Q. And where was it you saw O'Neil then? A. On River Street, front of Mr. Raguse's.

Q. Who was round him? A. He was talking in front of Mr. George Jones's.

Q. Anybody else there? A. No, sir.

Q. Did you see Woodward at that time? A. I don't think I did.

Q. Did you see Morrissey? A. No, sir.

Q. You know Jack Couard? A. Yes, sir.

Q. Was he there? A. He was there in the blacksmith's yard.

Q. How far was this from the blacksmith's shop? A. Oh, probably five or six rods.

Q. Was it in the building, or outside, on the street, you saw them?

A. What, — Jack Couard?

Q. No, O'Neil. A. Outside, on the street.

Q. How far was Jack Couard from where he was standing? A. From where O'Neil was standing?

Q. Yes. A. I should judge five or six rods.

GEORGE A. JONES — *sworn*.

Q. (by Mr. KNOWLTON). George A. Jones your name? A. Yes, sir.

Q. You live in Shelburne Falls? A. Yes, sir.

Q. On the Saturday that this body was found, did you see Mr. O'Neil? A. I did.

Q. Where did you see him? A. I saw him on River Street, or Water Street, it is sometimes called.

Q. What time of day was it? A. About a quarter of 1 o'clock.

Q. Quarter of 1? A. Yes, sir.

Q. Were you going to work, or something? A. I was going to my work from dinner.

Q. You were due at 1 o'clock? A. Yes, sir.

Q. Was he alone? A. No, sir.

Q. Who was with him? A. John Couard and Joseph Atkins.

Q. And did you and he have some talk? A. Yes, sir; he spoke to me as I passed by him.

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en drinking hadn't he? A. I should say he had, some; yes,

ad he called to you? Did you think he was drunk when you
? A. No, I didn't think he was, particularly; he was talk-
his companions as I passed by; I did not notice that he was

d you notice any of the rest of them were drinking? A. I
tell whether they had been or not, because I didn't speak
m.

ow long was the conversation that you had with him? A.
three minutes; I think not much more than that.

ad you heard that morning it was murder? A. I did hear
sir, early in the morning, that is, along in the middle of the
1, at my work.

here did you hear it was murder? A. When I was at my
the shop.

hen did you hear that report? A. Within fifteen minutes
ds, I think; contradicted from that time until I went to

didn't hear that answer. A. The report was changed within
ates after I first heard it was murder, and contradicted all
until I went home to dinner; I heard several times it was

ou heard different reports about it, didn't you? A. Not
g but that after the first reports come, that she was found
d, then it was disputed immediately, within a very few min-
ad the report stood like that until I went to my dinner, in
the time until night.

id you talk with many people about it? A. Did I?

es, sir. A. No, sir; not then.

ad you talked with many before you saw O'Neil? A. I think
but my shop mates, — I have two shop mates that work with
ie shop, — and with my wife, when I went to dinner; I think
all.

ith those four people? A. I think that is all that I spoke to

ell, now from which one of them did you hear it was murder,
A. There was a man that I worked for, that I was doing some
r, came into the shop, and said that Mrs. McCloud was found
ad.

hen where did you hear that she was found dead, and died
al death? A. Well, I think it was one of the foremen, I
was the foreman of the forging department, came in and said
t so, that she wasn't murdered, that she was found dead there.

Q. Give the exact words he said and you said, as near as you can remember them. A. He called my name, and I answered and passed on, and then he called me. I stopped, and he came to me, and he asked me what people were saying about finding Mrs. McCloud. I told him that they thought then that she was not murdered, but died a natural death. He made the remark that he hoped they would get the one that did it. I said I didn't see as there was anybody to get; if she died a natural death, nobody was to blame; and then I started along, and he went with me. We got down to the corner of Mr. Jenks's at the shoe store, and he made the remark again,—says, "What do they say about it?" And I says, "I can't tell you any more; that she died a natural death, and that is all there is to it;" and he made the remark again that he "hoped they would get the one that did it." And I said again, "If she died a natural death, there is no one to get," and I passed on to work.

Q. You left him at Jenks's corner? A. Yes, sir.

Q. Any one with him? A. He left his party and went on with me.

Q. That is all the talk you had with him? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). What time did you say that was? A. Somewhere about 1 o'clock.

Q. Whom did you say he was with, when he called to you? A. John Couard and Joseph Atkins.

Q. Had he been drinking? A. I think he had some; yes, sir; I smelled his breath.

Q. Smelled his breath? A. Yes, sir.

Q. Notice anything else about him? A. I did not.

Q. Quite talkative, wasn't he? A. He had some talk.

Q. Did you ever have any talk with him before when he was drunk? A. No, sir; never did.

Q. Did you ever talk with him when he was drinking before? A. No, sir.

Q. Ever drink with him? A. No.

Q. Ever been around with him when he was drinking? A. No, sir.

Q. So you don't know how he acts when drunk? A. No, sir; I have seen him when I thought he was under the influence of liquor.

Q. He was more talkative than usual, wasn't he? A. I don't know as he was, particularly; I have heard him talk before.

Q. Quite talkative fellow, anyway? A. Talks a good deal sometimes.

Q. What is that answer? I didn't catch it. A. Sometimes he has talked a good deal.

Q. Been drinking hadn't he? A. I should say he had, some; yes, sir.

Q. And he called to you? Did you think he was drunk when you saw him? A. No, I didn't think he was, particularly; he was talking with his companions as I passed by; I did not notice that he was drunk.

Q. Did you notice any of the rest of them were drinking? A. I couldn't tell whether they had been or not, because I didn't speak with them.

Q. How long was the conversation that you had with him? A. Perhaps three minutes; I think not much more than that.

Q. Had you heard that morning it was murder? A. I did hear so, yes, sir, early in the morning, that is, along in the middle of the forenoon, at my work.

Q. Where did you hear it was murder? A. When I was at my work in the shop.

Q. When did you hear that report? A. Within fifteen minutes afterwards, I think; contradicted from that time until I went to dinner.

Q. I didn't hear that answer. A. The report was changed within ten minutes after I first heard it was murder, and contradicted all the time until I went home to dinner; I heard several times it was not so.

Q. You heard different reports about it, didn't you? A. Not anything but that after the first reports come, that she was found murdered, then it was disputed immediately, within a very few minutes; and the report stood like that until I went to my dinner, in fact, all the time until night.

Q. Did you talk with many people about it? A. Did I?

Q. Yes, sir. A. No, sir; not then.

Q. Had you talked with many before you saw O'Neil? A. I think no one but my shop mates, — I have two shop mates that work with me in the shop, — and with my wife, when I went to dinner; I think that is all.

Q. With those four people? A. I think that is all that I spoke to about it.

Q. Well, now from which one of them did you hear it was murder, first? A. There was a man that I worked for, that I was doing some work for, came into the shop, and said that Mrs. McCloud was found murdered.

Q. Then where did you hear that she was found dead, and died a natural death? A. Well, I think it was one of the foremen, I think it was the foreman of the forging department, came in and said it wasn't so, that she wasn't murdered, that she was found dead there.

Q. And all that you talked with after that was your wife? A. Yes, sir; I didn't stop on the road.

Q. Then you didn't know what the people were saying outside of the shop? A. No, only those people in the shop.

Q. Only those people in the shop? A. No, sir.

Q. You only know yourself by what you heard, first by one of your companions in the shop that she was murdered, and then you heard by one of your shop companions that she was not, and then you talked with your wife, and then you didn't talk with anybody else about it until you talked with O'Neil? A. No, sir.

Q. So that the last statement that you heard before you talked with O'Neil was that she was not murdered? A. Yes, sir.

Q. Had you any knowledge of your own to know that Jack O'Neil had heard that she was murdered when he talked with you? A. I didn't; I didn't know.

Q. And have you any reason to know that Jack O'Neil had heard any different from the first report that you heard, that she was murdered? A. I didn't have any reason to know; no, sir; I did not.

Q. And if he had not, wouldn't his question have been perfectly natural?

Mr. KNOWLTON. Wait a moment. I object.

SHELDON, J. That is for the jury to say.

Mr. DOWLIN. I withdraw that.

Q. But you talked with him just so far as you have stated to the Attorney-General? A. I have.

Q. And you didn't hear any of his companions say anything about it in your presence? A. I did not; no, sir.

Q. Nor any one else? A. No, sir; not in my presence; I didn't notice it. Those people stood there on the corner by Mr. Jenks's.

Q. Did he act very unusual about it? A. Well, I couldn't say as he did, particularly, only he seemed very anxious to know in regard to it.

Q. Well, didn't anybody else that you talked with that day seem anxious to know all they could find out about it, all the information? A. I think they did; yes.

Q. Weren't you anxious yourself to get all the information that you could? A. Yes, sir; I liked to hear it.

Re-direct Examination.

Q. (by Mr. KNOWLTON). It was first brought into the shop; you didn't go out to get it? A. Yes, sir.

Q. This street talk got into the shop? A. Yes, sir.

- Q. This second rumor got into the shop? A. Yes, sir.
Q. So that the street rumors got into the shop? A. Yes, sir.
Q. So that things came in there? A. Yes, sir.

HALBERT G. LITTLEJOHN — *sworn*.

- Q. (by Mr. HAMMOND). Your name is Halbert G. Littlejohn?
A. Yes, sir.
Q. Do you recollect going to the place where Mrs. McCloud's body was found on Saturday morning? A. I do.
Q. And about what time did you go? A. About 9 o'clock in the morning.
Q. And who were there when you arrived? A. There was a number there, Mr. Stone, Mr. Avery, Mr. Meyer, Mr. Crittenden.
Q. Whether or not you helped carry the body up to the house?
A. I did; yes, sir.
Q. Will you state how her clothing was? A. Pulled down in front, her dress pushed up under her behind.
Q. How far pushed up under her? A. Oh, wadded up a little.
Q. Whether the body was left untouched until the medical examiner came? A. It was while I was there.
Q. Did you see John O'Neil on Saturday? A. I did; yes, sir.
Q. And about what hour? A. About 2 o'clock in the afternoon.
Q. Where? A. In front of Puffer's office.
Q. State all that was said at that interview. A. He asked me if I said her clothes were pushed up when we found her.
Q. Go on and state it all. A. I told him, "No, sir;" and then he says, "How were they?" and I told him her dress was pulled down and pushed up under her.
Q. Anything further? A. That is all that I said.
Mr. HAMMOND. Inquire.
[No cross-examination.]

ARTHUR J. ROLAND — *sworn*.

- Q. (by Mr. HAMMOND). What is your full name? A. Arthur John Roland.
Q. Where do you live? A. Shelburne Falls.
Q. Which side? A. Buckland side.
Q. Whether or not you saw John O'Neil, Jr., on the Saturday of the finding of Mrs. McCloud's body? A. I did.
Q. Where did you meet him? A. On the corner of Clement and Sears streets.
Q. Well, state in which direction each of you were going, if moving? A. I was coming down the hill, and he was coming up.

Q. Where had you been? A. I had been up to the place where the body was found.

Q. Were you acquainted with John? A. I was; yes, sir.

Q. Did you have a conversation? A. I did.

Q. State now, in detail, that conversation. A. Well, it would be impossible to state the whole of it.

Q. State as much of it as you can, — the substance. A. Well, he hailed me and asked a question, the substance of which was, what had they given out; and the doctors at this time were having the autopsy and hadn't finished. I told him that they hadn't finished, and it wasn't known. And I then started to pass on, and he again spoke to me and asked me what I thought about it, and I told him I didn't want to think that the women in Buckland couldn't go home at night without something of this kind happening; and I was in hopes that the doctors would prove it was from natural causes. That isn't the exact language, but that is the substance of it. I then started down Sears Street, towards the peg shop, and he came down with me a yard or two, and asked me to stop, he wanted to tell me something, and went on then to tell about the night before, when he was returning home about 1 o'clock, he found a man on his steps, and he had some words with him. My impression is that the man was a stranger to him, and I don't know whether they came to blows or not, but they had some argument. I didn't pay very much attention to it, because I was somewhat anxious to get on about my business. But he then made the statement, after speaking of this man, that, calling me by name, he says, "Arthur, that is the man that done it." I then made some remark to the effect that it wasn't proved that anything had been done, it might yet be natural causes; and he then repeated the statement, "I tell you, that is the man that done it," and went on to state that he would like to hang him, and I intimated that I would help. He then stated that he wouldn't need any help, he would do it himself. That is the substance of the whole conversation.

Q. Do you recollect any reply of yours as to probabilities? A. How is that?

Q. Do you recollect any reply of yours to him, which you have omitted, as to the probabilities? A. That is the substance of the conversation I had with him; I don't remember of anything further.

Q. Whether you said if there is anything of that kind he wouldn't be likely to be — A. Oh, yes, there was a little conversation, yes, in regard to the man that he found at the house.

Q. Yes. A. Yes, I made a remark that if this man did it, why, he probably wouldn't be round there.

Q. Anything further? A. I don't recall anything now.

Cross-examination.

Q. (by Mr. DOWLIN). What time of day was this? A. The time was from 3 to 3 30 in the afternoon.

Q. In the afternoon? A. Yes, sir.

Q. How do you fix it between 3 and 3.30? A. Well, I had an engagement with a truckman in town there at 4.15 to meet him at Captain Richmond's shop, and I had already begun to make arrangements for meeting him there.

Q. That was from 3 to 3.30, somewhere; it might have been after 3.30, mightn't it? A. It couldn't have been after, I don't think.

Q. Somewhere about 3.30? A. Yes.

Q. And that was Saturday afternoon, January 9? A. Saturday afternoon; yes, sir.

Q. Well, where did you say you met O'Neil? A. At the corner of Clement and Sears streets.

Q. Clement and Sears? That is the street that crosses from Green Street, the street that he lives on, over onto Clement Street? A. Right on this corner here.

Q. Well, did you notice any sign of liquor on him? A. Why, I should say that he was somewhat under the influence of liquor.

Q. You should say that during all this conversation you had with him he was somewhat under the influence of liquor, would you? A. I don't think his condition changed during the time I was talking with him; no, sir.

Q. (by Mr. KNOWLTON). I didn't hear that. A. I don't think his condition changed during the time I was talking with him.

Q. (by Mr. DOWLIN). And you didn't see O'Neil before that day, did you? A. What is that?

Q. Did you see O'Neil before that Saturday? Did you see O'Neil before that time? A. That is the first time I saw him that day; yes, sir.

Q. The first time? A. Yes, sir.

Q. Now, was he alone? A. He was.

Q. Anybody around there? A. There was the two parties that came down the hill with me, Mr. Cronin and Mr. Walker; they had gone on down the street.

Q. Did he call to you? A. Yes, sir.

Q. Stopped you, hailed you, didn't he? A. Yes, sir.

Q. Is he in the habit of doing that when he is sober? A. Why, we very often spoke as we met.

Q. He wanted you to stop, wanted to tell you something or talk with you, didn't he, then? A. He stopped me first, and asked me a question.

Q. And you then noticed the signs of liquor on him? A. Why, he was in what you might call a talkative condition.

Q. A drunken, talkative condition? A. He was not talking very loud.

Q. No, but in an intoxicated, talkative condition? A. I should consider him in a talkative condition.

Q. Due to the use of liquor? A. I should presume so.

Q. When was the first time that you heard about Mrs. McCloud, about her body being found up on the road? A. Some time between 9 and 10 in the morning.

Q. What was the first report that you heard? A. That Mrs. McCloud had been found dead upon the side of the road.

Q. About what time did you hear of the first reason or cause for her death? A. Well, it was a matter of conjecture all through the day until the doctors' autopsy had been made.

Q. Excuse me, but about what was the time you first heard any cause of her death? A. I don't remember.

Q. What? A. I don't remember.

Q. Do you mean the result of the autopsy? A. Oh, no, no.

Q. Whom did you first hear express an opinion of what was the cause of her death? [Objected to.]

Mr. DOWLIN. Well, when I get at the time, I will connect it.

Mr. KNOWLTON. You had better put in the other by and by.

Q. (by Mr. DOWLIN). Yes, for the present I will confine myself to the time. A. I don't remember what time it was.

Q. To refresh your memory as to the time, can you remember whom you first talked with, and where it was? A. What is this? Regarding her death?

Q. The first person, the time when you first heard any reason for her death, — any cause? A. Well, I couldn't state; I heard a great many people talk all through the day, and who was the first to mention any such thing I don't know, nor at what time it was.

Q. What was the first reason that you heard of her death? A. I couldn't say that; I heard various reasons, but which was the first, I don't know.

Q. Well, give me the various reasons. What were they? What were those reasons? A. Well, robbery was advanced, lust, a combination of both, — all sorts of reasons.

Mr. KNOWLTON. Do you mean reasons or causes?

Q. (by Mr. DOWLIN). I meant causes, the causes of her death. A. The most popular reason was strangulation.

Q. Was that the first cause you heard? A. I couldn't say.

Q. What was the other cause you heard, if any? A. Well, that

might have been taken with some sudden sickness, — something of that sort.

Q. And wandered down in there, and died? A. Yes; I heard him advance a theory of that sort.

Q. So you heard various causes from different sources? A. Yes,

Q. And heard them before you ever saw Jack O'Neil that day? A. Well, I presume yes, that I had heard some of them before that.

Adjourned.

SIXTH DAY.

SATURDAY, July 24, 1897.

The roll of the jury was called, and the prisoner answered to his name.

JOHN P. NUTTING — *sworn*.

Q. (by Mr. HAMMOND). Your name is John P. Nutting? A. Yes, sir.

Q. Where do you live? A. Buckland.

Q. On the Buckland side? A. Yes, sir.

Q. Do you know John O'Neil? A. I have seen him; yes, sir.

Q. Did you see him on Saturday afternoon, January 9? A. I did not.

Q. Or at any time Saturday? A. I saw him Saturday forenoon.

Q. About what time? A. Between 10 and 11 o'clock.

Q. State where. A. At the crossing of the electric road, standing there in front of the barber shop.

Q. Where the electric road crosses Bridge Street? A. Yes, sir.

Q. State who were present, if you can name any. A. I don't remember any one that was in the crowd that stood there as I went along, but Thomas Glassett; I happened to notice him.

Q. State, if you noticed, what O'Neil did and what he said. A. As I came along there was quite a collection of boys and men there, and I saw him hand a bill to some one, I can't tell whom, and drop one. I didn't see him drop it, but I saw a bill lying there, and I told him, "You are losing your money," something like that. He didn't pay any attention to me then, and I told him the second time. Finally he stooped down and picked it up, and turned his attention to me, and he says, "I have got ten dollars," and held it up.

Q. Well, go on. A. That is all the conversation I had with him. only he made an indecent remark.

Q. State it all. A. When he picked up the bill from the sidewalk he says, "I will give you two dollars to tell me where I can get—" I won't repeat the improper word.

Q. What did the word mean? A. It meant lust.

Cross-examination.

Q. (by Mr. DOWLIN). How old are you, Mr. Nutting? A. Forty-seven.

Q. Where are you working now? A. At the depot, freight house,

handling derricks, loading stones for the last week or two. I am working at the depot when I ain't painting somebody's house.

Q. You job around? A. Yes, sir.

Q. What time Saturday morning did you say you met John O'Neil?

A. It was between 10 and 11 o'clock; I ain't positive about the hour. I have nothing to remember by, except I went over the river on the Shelburne side to see a team. If it hadn't been for the team I couldn't place the hour.

Q. Are you sure it wasn't after 11 o'clock? A. I am sure it was between 10 and 11.

Q. Did you see any clock after you left O'Neil? A. Who?

Q. Did you see any clock or timepiece after you left? Just answer the question, yes or no. A. No, sir.

Q. So, then, you are not positive but what it was after 11 o'clock?

A. No, I am not.

Q. How many were there gathered there in front of the barber shop? A. Well, a rough estimate, I should think fifteen or twenty, quite a crowd; an electric car was standing there.

Q. Was the electric car standing on the crossing or down in —

A. Standing right side of the barber shop, right very near where he was standing.

Q. And he was standing pretty near in front of the electric car, or farther down the street? A. No, sir; he was standing directly in front of the barber shop, at the corner of Joel Thayer's building.

Q. There were fifteen or twenty, you say? A. Yes, sir.

Q. At the least calculation? A. I should judge there was, people that were boarding the car, and what stood round there.

Q. And while you were talking, did the car move off? A. No, sir.

Q. The car was there during all the time of your conversation?

A. Not occupied over a minute.

Q. Who else was there besides O'Neil? A. Thomas Glassett.

Q. Who else? A. I don't remember any other.

Q. Fifteen or twenty persons there, and you stopped and talked with one of them? A. Yes, sir.

Q. And you can't remember only the man that you talked with and one other person, — is that all? A. That is all.

Q. You can't remember a single person? A. I simply held up a minute while I went through the crowd, that is all; didn't make any conversation.

Q. Had you been drinking that morning? A. Me?

Q. Yes. A. No, sir.

Q. Mr. Nutting, where do you live? A. I live very near the station, Shelburne Falls, within four or five hundred feet.

Q. Which way from the station? A. North.

Q. How many are there in your family? A. Myself and my wife.

Q. How many were staying at your house on Friday night, January 8? A. No one at all.

Q. Any other person or persons stopping there besides you and your wife? A. Not at my house; I don't occupy only part of the building; there are five families.

Q. How long do you say you was occupied in talking to O'Neil?
A. Two or three minutes, or a minute or two, more or less.

Q. Did you speak to any one else? A. Not that I know of.

Q. Did you say a word to any one else? A. I haven't any recollection of making any remark to any other person.

Q. Did you call anybody's attention to the fact that there was a bank note on the ground? A. I might, — no, sir; I don't know as I did.

Q. Did you call O'Neil's attention to it? A. Yes, sir.

Q. Before you stooped and picked it up? A. He stooped and picked it up.

Q. Oh, he stooped and picked it up? A. Yes, sir.

Q. Who was standing near O'Neil? A. He was back to the wall.

Q. Yes; who was standing near him? A. I don't remember.

Q. To whom did he give a bill? A. I don't know who he handed the bill to.

Q. You saw him hand the bill to some one? A. He passed a bill over to some one.

Q. He just passed it out this way, or reached out and handed it to somebody? A. He doubled it up.

Q. Kind of doubled it up and passed it up that way? A. Handed it over.

Q. You didn't see who took it? A. No, sir.

Q. You didn't see who was standing there? A. No, sir.

Q. Who were standing around him, — how close to him? A. Glassett stood there. I passed on through the crowd; I only happened to see the bill, and I thought he was —

Q. Who was standing round him, do you remember? A. Nobody but Glassett, that I remember; I can't remember any of the others.

Q. You don't remember whom he gave the bill to? A. No, I do not.

Q. You don't remember who were standing with him? A. No.

Q. And still you saw the bill on the ground? A. I saw the bill on the ground.

Q. And you just tapped him on the shoulder and called his attention to it? A. That's it.

Q. Have you any reason to know it was his bill more than any one else's? A. No, sir; I simply —

Q. No, sir, answers the question. What did you do after O'Neil picked up the bill? A. Passed along as quick as I could.

Q. Passed along as quick as you could after he picked up the bill? A. Yes, sir; I went straight to the depot.

Q. Did you talk with anybody else? A. No, sir; not to my remembrance.

Q. So that after O'Neil picked up the bill, you passed right along, you didn't do a thing? A. No, sir; I didn't do a thing; I just passed along and went across the bridge.

Q. After he picked up the bill, you passed right along and didn't do a thing. You passed right up to the depot. That's it, is it? A. As near as I can remember.

Q. Now, just what was it that O'Neil said about the money? A. He didn't make any remark about the money.

Q. Didn't make any remark at all? A. No, sir.

Q. And all that you saw, then, and all that you know, is that you saw a bill in his hand and one on the ground? A. Yes, sir; that is all that I —

Q. You didn't hear him say anything about money at all? A. Not a word, only —

Q. Not a word. Is that it? A. Not a word about money, — any conversation at all between him and me.

Q. Did you hear him have any conversation with anybody? A. No, sir. Oh, yes, if I remember right, whoever he handed the bill to, he — as I understood him, told him to get some change, have it changed, or something like that. I had my impression that they was going to board the cars.

Q. You have a recollection of it, you say? You had it in your mind? A. Why, I had an impression that they wanted —

Q. Well, not what your impressions were, but I say, you have a recollection that he said something about getting the bill changed, do you? A. Yes, sir.

Q. What did he say? A. "You get that changed," or something like that; he made that remark.

Q. It attracted your attention? A. It did; yes, sir.

Q. Why didn't you see the man he handed it to? A. I didn't notice who it was; it was over so quick that I didn't retain it in memory.

Q. You didn't pay much attention to the affair anyways, did you, Mr. Nutting? A. No, sir; I did not.

Q. And you are not very definite or positive of what you heard or what you did not, are you? A. No, sir.

Mr. DOWLIN. That is all.

FRANK H. CHANDLER — *sworn*.

Q. (by Mr. HAMMOND). Your full name? A. Frank H. Chandler.

Q. You live in Buckland? A. Yes, sir.

Q. You know John O'Neil? A. I do.

Q. Did you see him on Saturday, January 9, and have some talk with him? A. I did.

Q. State it all. A. I met John O'Neil on Saturday, at about quarter before 1, as I was going back to the store from dinner.

Q. Locate the place. A. I met him between Marshall's barber shop and Herring's five-cent store. He stopped me and said, "Well, Frank, what do you hear about the case?" I said, "I don't know that I have heard any more than every one is talking about it." He said, "Do they think it is murder?" I said, "I don't know. I don't think we can tell that until the doctors have finished the autopsy." He said, "I knew Mrs. McCloud. My mother did her washing." That was all.

[Cross-examination waived.]

WILLIAM H. WALKER — *sworn*.

Q. (by Mr. HAMMOND). Your full name? A. William Henry Walker.

Q. Where do you live? A. Shelburne Falls.

Q. Which side? A. Buckland.

Q. Do you know John O'Neil? A. Yes, sir.

Q. Whether or not you met him on the Saturday that Mrs. McCloud's body was found? A. I did.

Q. State fully what you saw of him, and any conversation you had with him. A. I was with T. S. Cronin, coming down from the place where Mrs. McCloud's body was found. On Clement Street I met John O'Neil, Jr., and he stopped suddenly and said to me, "What have they found out?" I said, "They say it is murder."

Q. Can you describe his manner, or what he did? A. He seemed to be set back.

Q. Describe it. A. Acted a little strange; I don't know as I could really describe how he did act.

Q. Whether he made you any reply? A. No, sir; he stammered, but made no reply.

Cross-examination.

Q. (by Mr. DOWLIN). What did you say your name was? A. William H. Walker.

Q. What do you do there? A. I work in the cutlery.

Q. What time of day was this? A. This was about half-past 3.

Q. Half-past 2 in the afternoon? A. Half-past 3 in the afternoon.

Q. Half-past 3 in the afternoon? A. Yes, sir.

Q. Did you meet O'Neil with any one else? A. No, sir.

Q. Which way was he going on Clement Street? A. He was going towards home.

Q. Did you notice anything unusual about his condition? A. No, sir; not only —

Q. No, sir, answers the question. [Objected to.]

SHELDON, J. If he was about to qualify the answer, then "No, sir," does not answer.

THE WITNESS. Nothing unusual, only, as I said, he acted a little strange.

Q. Do you know whether that strangeness was due to liquor or not? A. I couldn't say.

Q. Did you detect any traces of liquor on him? A. I didn't notice.

Q. How close were you to him? A. Well, perhaps as close as I am to this gentleman here [indicating].

Q. And you were coming down Clement Street? A. Yes, sir.

Q. Or, in other words, Clement Street leads up to the Crittenden road? A. Yes, sir.

Q. This is Clement Street here [indicating on map]. A. Yes, sir.

Q. And you were coming down towards the village? A. Yes, sir.

Q. Naturally you might have been coming from the place where the body was found; that would be the direct route. A. That was where I came from.

Q. That was where you came from? O'Neil you met on Clement Street? A. Yes, sir.

Q. He inquired of you, "What have they found out"? A. Yes, sir.

Q. Did anybody else ask you that day what they had found out? A. I don't remember; there might have been quite an unusual number.

Q. Was it in the latter part of the day? A. Might have been in the latter part of the day.

Q. And you say you said, "They say it is murder"? A. Yes, sir.

Q. And he passed on? A. Yes, sir.

Q. Didn't make any reply? A. Didn't make any reply.

Q. Going about his own business, he simply asked you the question what they had found out? A. He asked me the question.

Q. When you heard of Mrs. McCloud's murder, you were somewhat excited, weren't you, naturally? A. I presume I was, the same as the rest of the people.

Q. When did you go up there the first time? A. That was the first time, sir.

Q. And you had gone up there and looked around. Had you been up to Mr. Crittenden's house? A. No, sir.

Q. You hadn't seen the body? A. No, sir.

Q. You simply looked round the woods? A. Yes, sir.

Q. You passed people up there? A. Yes, sir; passed some people up there.

Q. How many people went up there? A. That is a question I can't answer.

Q. To your best judgment? A. I don't remember just how many, — perhaps half a dozen, perhaps more.

Q. Then, on your way down from that place, after you had been up there, you met O'Neil, and he had this conversation? A. Yes, sir.

MARY HURLEY — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Mary Hurley.

Q. Where do you live? A. Well, Shelburne Falls is my home, but I don't live there; I live in Westfield now.

Q. Where were you Saturday, January 9? A. In Shelburne Falls.

Q. At what place? A. At Sam Elmer's.

Q. Where is that? A. Well, it was on the hill; I don't know the streets, or anything about it there.

Q. How long have you lived there? A. Seven months.

Q. Is it on the Buckland side? A. Yes, sir.

Q. Do you know John O'Neil by sight? A. Yes, sir.

Q. Whether or not you saw him at any time on Friday or Saturday? A. I saw him Saturday morning.

Q. At about what time? A. Between half-past 9 and quarter of 10 o'clock.

Q. And whereabouts did you see him? A. Well, I saw him starting from his home towards the railroad crossing.

Q. State what you first saw of him, and where. A. Well, I had been up to the dressmaker's, and was going on my way home, and in order to get home I went by his house, and saw his mother out on the piazza watching him. She looked as though she had been washing, and Johnnie was down ahead, and he walked real slow till I got on the railroad crossing. I said, "Hello, Johnnie," and he said, "Hello, Mary." And I says, "Isn't it too bad about Mrs. McCloud's being murdered," and he says, "Yes." And I says, "You wouldn't think of anything like that happening in a little town like this," and he said, "No." And I said, "I am going to be careful hereafter about going up that road alone; I am not going up that road alone any more." And I don't know what he did say.

Q. Whether he did anything? A. He said something, but I don't remember what it was.

Q. Did you notice what he did next, if anything? A. No, I started right on my way home.

Q. Where did you leave him? A. I left him standing on the railroad crossing.

Q. The crossing of the street on which he lives? A. Yes, sir.

Q. Did you see how long Mrs. O'Neil stayed on the piazza? A. No, sir; I didn't watch her at all; I just noticed her as I went by.

Q. On what part of the piazza was she standing? A. Well, I don't remember.

Q. Whether or not it was on the part nearest the street? A. I don't remember.

Q. How far down the street was John when you saw him first? A. He was just about two yards ahead of me.

Q. And where were you when you first saw him and his mother? A. I was coming down from the dressmaker's.

Q. Well, as to the front of the house, whether opposite the front of the house or not? A. Opposite the front of the house.

Cross-examination.

Q. (by Mr. DOWLIN). Where do you say you saw Mrs. O'Neil and her son? A. I saw Mrs. O'Neil on the piazza and her son down ahead of me.

Q. Well, on the piazza of whose house? A. Of O'Neil's house.

Q. Now, will you tell me just where that piazza is located on that house? A. Well, it is located on the eastern side of the house, I think.

Q. The front or rear of the house? A. I don't know much about the house; I just know it is the O'Neil house.

Q. Did you see her on the front of the house, or on the side of the house, or on the rear of the house? A. On the front of the house.

Q. You saw her on the front of the house? A. Yes, sir.

Q. Next to Green Street? A. Yes, sir.

Q. Standing on the piazza? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. And the conversation that you had with O'Neil was down by the railroad crossing? A. Yes, sir.

Q. When you said to him that it was too bad that Mrs. McCloud was murdered? A. Yes, sir.

Q. And he said yes? A. Yes.

Q. And what you have stated is all you know about it? A. Yes, sir.

Q. And the location of the parties as you have stated is so? A. Yes, sir.

FREDERICK E. REED — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Fred E. Reed.

Q. Your residence? A. Shelburne Falls.

Q. Which side? A. Shelburne side.

Q. Do you know John O'Neil? A. I do, sir.

Q. Did you meet him at any time on Saturday? A. I did, sir.

Q. The day Mrs. McCloud's body was found? A. I saw him, yes.

Q. Where? A. In front of the five and ten cent store.

Q. What was the time of day? A. Nearly 11 o'clock; I have no way of placing it accurate, but not far from 11 o'clock.

Q. That is the Shelburne side? A. That is the Shelburne side, yes, sir.

Q. And how many were present? A. Why, there was a crowd, quite a crowd.

Q. State how you came to meet him, if you recollect. A. Well, Mr. Richmond and I were standing front of Mr. Jenks's store. talking about the matter, and there was two or three different stories as to who found her, and I told him I heard Mr. Peters found her, and he says, "There is Mr. Peters, over there, let's go over and find him." So we went over, and while talking to Mr. Peters, Jack O'Neil and a fellow by the name of Atkins — I don't know his given name — came off from the bridge together and came up to where we were. That is the first time I see him, and the last time.

Q. Did you hear any talk? A. I did.

Q. State it. A. Very little, not but a little.

Q. State it. A. Well, sir, they was all talking, and Jack broke out and he says, "Mrs. McCloud was a damned fine-looking woman." He says, "My mother does her washings." That is all I heard, that I could swear to. There was more conversation, but I paid no attention, because he wasn't talking to me nor I to him.

Cross-examination.

Q. (by Mr. DOWLIN). What time should you say this was? A. It wasn't far from 11 o'clock, because I didn't hear of it till past 10, and then I started right down town.

Q. There was quite a crowd on the street? A. Well, Mr. Lyman Richmond —

Q. I say there was quite a crowd on the street? A. There was lots of people, — lots of people talking.

Q. Lots of excitement? A. Yes, sir; lots of excitement, and people every little ways talking about this thing.

Q. How many were there gathered in this particular group where you went over to see Peters? A. I should think there was eight or ten in this group.

Q. He was a sort of centre of attraction down there, wasn't he?

A. Yes, sir; he seemed to know the most about it.

Q. So that there was quite a crowd gathered around him, wasn't there? A. I should say there was eight or ten there, sir.

Q. And they were talking, different people expressing their opinions? A. I think so.

Q. And passing comments back and forth? A. Well, I wasn't there but a few minutes, anyway, but of course while I was —

Q. And sometimes there would be a couple of persons speaking at once? A. Not much, because, if any one spoke, they all listened to see what he said, because everybody was interested.

Q. And they were free in expressing their opinions, weren't they? A. Well, I suppose so. It would be a natural consequence.

Q. Where did you go when you passed across the street? A. I went from Jenks's store right across to this Mr. Peters.

Q. Did you notice where O'Neil and Atkins came from? A. They came over the bridge from the Buckland side of the river; they came over the bridge and along that sidewalk where we were, and then stopped.

Q. Did you see anything peculiar about the condition of O'Neil? A. Well, they was both under the influence of liquor, more or less, anyway; they wasn't drunk, but they had been drinking. I thought Mr. Atkins was full as bad off as the other one.

Q. You noticed that they were both — A. They were both under the influence of liquor, if I am any judge.

Q. You didn't pay much attention to what they did say? A. We heard what they said, and I noticed that, because we commented on it after they were gone.

Q. You didn't pay much attention to what they did say? A. That was just as distinct as if you had said it right now.

Q. Before you heard that expression, did you notice it, when they stopped, or just before, that O'Neil was under the influence of liquor?

A. I did; I noticed it when they came across the bridge.

Q. You wouldn't pay much attention to a man's remarks who was under the influence of liquor, would you? A. Well, you would at such a time as that.

Q. You didn't notice particularly at the time what he said? A. Well, yes; everybody was talking about the murder.

Q. They were all calling it a murder? A. Well, her being found, — I don't know as they called it a murder, because the inquest hadn't been held.

Q. Had you heard that it was a murder at 11 o'clock? A. I hadn't then.

Q. What had you heard at 11 o'clock? A. I heard she was found dead.

Q. [This question the reporter did not get, and the witness's answer was said to have been interrupted. The reporter was called upon to read the last question and answer, and he read the answer, "I heard it was a murder," which was wrong.]

THE WITNESS. That was a slip of the tongue. I think there was nothing said about a murder until after the inquest was held, and that was after the inquest Saturday night.

Q. So far as you heard? A. So far as I heard; they simply said Mrs. McCloud was dead.

Q. You hadn't heard Dr. Upton talking? A. No, sir.

Q. And you hadn't seen Mr. Irvin,—he wasn't in that crowd? A. No, sir.

Q. Had you heard anybody say that she had wandered down over the rocks and died? A. No, sir; in fact, I hadn't seen anybody until I saw this man.

Q. So that when you saw this — A. I can explain exactly. I went home and started to go down cellar, and a lady that lives there asked me if I had heard the news. I asked, "What news?" And she said Mrs. McCloud had been found dead. It was almost 10 o'clock then, and I went right out and I saw Mr. Richmond, and I was talking in front of Jenks's probably fifteen or twenty minutes, when I saw Mr. Peters, and of course I says, "We will see who did find her." And it hadn't been half an hour since I heard it.

Q. So that you hadn't heard much about it from the expression of peoples' opinions? A. No, sir; I had not.

Q. And all that you heard O'Neil say was what he said there when you noticed that he was under the influence of liquor? A. That is all.

Q. (by Mr. HAMMOND). How long did you stay down town? A. I stayed until dinner time.

DENNIS O'BRIEN — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Dennis O'Brien.

Q. How old are you? A. Sixteen.

Q. What is your father's name? A. Jim.

Q. Well, state your father's full name? A. James O'Brien.

Q. Where do you live? A. Shelburne Falls.

Q. On which side? A. Buckland.

Q. Do you know John O'Neil? A. Yes, sir.

Q. How long have you known him by sight? A. I don't remember.

Q. Do you remember the morning on which Mrs. McCloud's body was found? A. Yes, sir.

Q. Did you see John O'Neil that day? A. Yes, sir.

Q. And about what time of day? A. I don't remember.

Q. Well, whether it was forenoon or afternoon? A. It was afternoon.

Q. Had you had your dinner? A. Yes, sir.

Q. And how near noon, how quick after dinner, do you think it was that you saw him? A. About quarter of 1.

Q. And whereabouts was it first? A. By Knowlton's.

Q. And that is on Bridge Street? A. Yes, sir.

Q. Well, can you remember whether any other people were there? A. Mike Hurley and Thomas O'Connell.

Q. Whether any others were with O'Neil? A. He was alone.

Q. Now, did you see him doing anything or saying anything to anybody? Begin with the very first thing you saw, and tell the gentlemen about it. A. I don't remember hearing him say anything.

Q. What? A. I don't remember hearing him say anything.

Q. Well, were you near Joel Thayer's store? A. Yes, sir.

Q. Whether you heard him talking with a man there at Joel Thayer's store? A. I didn't hear him talking with any one.

Q. Whether you heard him ask the man any question? A. I didn't hear him ask no questions.

Q. Well, whether John O'Neil was asking any questions there at Joel Thayer's store when you were there, Dennis? A. I don't remember.

Q. Did you hear him talking with anybody about the death of Mrs. McCloud? A. He asked Harold Littlejohn, over at Puffer's, what did he think about the murder, and Littlejohn told him he didn't know nothing about it.

Q. Did you hear him talking about opinions, what they thought about it? A. I heard him ask Littlejohn.

Q. Well, go ahead. A. And that is all he said.

Q. Tell all he said to Mr. Littlejohn, and all Mr. Littlejohn said to him. A. "Well, Littlejohn, what do you think about the murder last night?" and Littlejohn said, "I don't know anything about it," and then he went away.

Q. Do you recollect any inquiry about how she looked? A. No, sir.

Q. Do you recollect his asking Walter Shaw, — asking Shaw anything about it? A. Yes, sir; he asked Shaw what he thought about it, and Shaw says he didn't know as he thought it was murder; she looked natural enough. That is all he said to him.

Q. What store was this? A. Knowlton's.

Q. Did you hear him talking, or see him doing anything with people who came along travelling? A. Saw him talking to two hoboos.

Q. Was that at the same time, or a little later? A. Little later.

Q. About where was that? A. Right over by Jake Pfersick's saloon.

Q. On what street? A. I don't know what street.

Q. Which side of the river? A. Buckland.

Q. Did you see him when he moved over the bridge? A. Yes, sir.

Q. Whether it was right off after he had gone over the bridge?

A. Right off after he had gone over the bridge.

Q. State what occurred over there. A. Oh, he hit him.

Q. Well, tell all about it; describe it so the gentlemen will know what you saw. A. In the first place, the hoboos came along, and O'Neil was standing by Knowlton's and he says, "By Jesus, there's the lads done me out of ten last night." And he went over the bridge and grabbed him and said, "What is your occupation?" The hobo says, "I don't know as I have got to tell you." And O'Neil says, "By Jesus, you have." He says, "You done me out of ten last night." The hobo says, "I have just come from Miller's Falls." And O'Neil hit him and knocked his hat off, and then the hobo bit his thumb, and he gave him an upper cut, and that is all there was to it.

Q. Who gave the upper cut? A. O'Neil.

Q. Then where did you go? A. Back over the bridge.

Q. And where did O'Neil go? A. Towards home, up around Ward's corner.

Q. Well, whether you had any talk with him yourself, about that time or a little later, about his head? A. Well, me and Willie Morrissey was over by Joel Thayer's, and he went up that way and came back, and he said, "Last night —

Q. This talk, — was it before he had the trouble with the hobo? A. After.

Q. Well, now, the talk he had with you was where? A. Over by Joel Thayer's.

Q. Whether or not he came back over the bridge to the Shelburne side again? A. Yes, sir.

Q. Did you? A. No, sir.

Q. Where were you? A. Over by Joel Thayer's.

Q. Joel Thayer's is on the Buckland side? A. Shelburne.

Q. When you were at Joel Thayer's at this time, what did he say to you, or show you? A. He said, "See where the son of a bitch kicked me."

Q. And to whom did you understand him to refer? A. The hobo.

Q. Did he say when he kicked him? A. When he was going home last night, about half-past 2.

Q. Did he say anything more about the hoboes, who they were?

A. No.

Q. Did he say where the hoboes were? A. Up on his doorstep when he got home.

Q. Whereabouts was the mark that he showed you boys? A. Right in the part of his hair.

Q. Put your hand on your hair and show. A. Right down there [showing].

Q. I will ask you to describe, as nearly as you can, what was on his head. A. A cut.

Q. Describe it. A. I can't describe it, — only a cut.

Q. How large was it? A. Half an inch.

Q. Was William Morrissey with you? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). Where do you live? Shelburne Falls? A. I don't know.

Q. Buckland or Shelburne side? A. Buckland.

Q. Which way do you go from the bridge to go home? A. Go for the Buckland side.

Q. If you were standing on the Buckland side of the bridge, which way would you turn, facing towards Amstein's store, right across the street, which way would you turn on the straight road to go home? A. South.

Q. Do you live down on Conway Street? A. No, sir.

Q. Do you go up to the depot? A. Yes, sir; go any way, — there are three or four different ways.

Q. Which way do you naturally go home? A. Up the macadamized road, up by the engine house, up Dungarden Street, and then turn to your left on your way up the hill; they call it Dungarden Street.

Q. How far east from the bridge? A. About half a mile.

Q. What time did you take your dinner? A. Twelve o'clock.

Q. How long did you stay at home after you ate your dinner before you came down street? A. As quick as I could get my hat.

Q. When you got down street, where did you see O'Neil? A. By Knowlton's.

Q. That is over on the Shelburne side? A. Yes, sir.

Q. Some time about 1 o'clock? A. Yes, sir.

Q. How many were standing around there when you was there? A. Five or six.

Q. Who was with him? A. Nobody.

Q. Did you see anything of Charlie Woodward? A. No, sir.

Q. Did you see anything of Atkins? A. No, sir.

Q. Did you see anything of Couard? A. No, sir.

Q. You know all those boys? A. Yes, sir.

Q. And you didn't see anything of them? A. No, sir.

Q. Whom did you see standing with O'Neil? A. No one.

Q. No one? He stood there alone? A. Yes, sir.

Q. Well, what was he doing? A. Nothing.

Q. Talking to any one? A. No, sir.

Q. And when did you first see him move after you saw him standing there alone, not talking to any one? How long after you got there? A. I don't remember.

Q. Fifteen minutes? A. I wasn't listening to O'Neil, I was listening to the murder, — what they were saying about the murder.

Q. Whom did you hear talking about the murder? A. Mr. Peters and Walt Shaw; that is all I can remember.

Q. They called it murder, did they? A. Yes, sir.

Q. And that was before you heard O'Neil say anything about it? A. Yes, sir.

Q. How long after you heard them calling it murder was it that you heard O'Neil say something about it? A. About twenty minutes, — fifteen or twenty.

Q. Fifteen or twenty minutes afterward? A. Yes, sir.

Q. And did you see him move around any before then? A. He went from Herring's corner over to Knowlton's.

Q. I thought he was in front of Knowlton's then? A. Well, when they was talking about the murder he was in front of Herring's, and then he crossed the street to Knowlton's.

Q. Oh, so you heard these people talking about the murder in front of Knowlton's? A. In front of Herring's.

Q. In front of Herring's? A. Yes, sir.

Q. And then he crossed the street over in front of Knowlton's? A. Yes, sir.

Q. And that was where you heard O'Neil say something? A. Yes, sir; he asked Littlejohn what he thought of the murder. Littlejohn said he don't know nothing about it, and he went up in Mr. Puffer's office.

Q. Mr. Puffer's office is right up in that same building, isn't it? A. Yes, sir.

Q. And when O'Neil came across the street, and asked Littlejohn what he thought about the murder, he came from the place where you had heard these men talking about the murder? A. Yes, sir.

Q. And he was where he could hear them, wasn't he, — he was standing where he could have heard the same conversation that you heard, wasn't he? A. Yes, sir.

Q. And what did you see O'Neil do after that, after he asked Little John what about the murder? A. He came up by Knowlton's, and he stood, and then we walked across the street, and he says, "There's the two lads that done me out of ten last night."

Q. Did you walk across with him? A. No, sir.

Q. Whom did he go across with? A. Himself.

Q. And you boys were behind him? A. No, sir; we were standing by the bridge, and he came down from Herring's and he came across, and we went right straight across.

Q. And he was roaming around? A. No, sir; he only just went from Herring's to Knowlton's.

Q. He went across there, and he saw these two fellows you call hoboos, — what do you mean by that? A. Tramps.

Q. And what were they, pretty hard-looking citizens? A. That is what they was.

Q. And after O'Neil's eyes fell on those two tramps, you say he went up to them and accused them. Tell just what he did. A. He says, they done him out of ten.

Q. Which one did he say it to? A. The littlest one.

Q. Well, there were two of them? A. Yes, sir.

Q. And what was the tramp's reply? A. He says that he didn't do it; he only just come from Miller's Falls.

Q. And now, prior to the time that he met these tramps, when you first saw him, and saw him cross the street, he was under the influence of liquor, wasn't he? A. A little, not much.

Q. Then, after he accused this tramp of having done him out of ten, and the tramp denied it, what did O'Neil say or do? A. Well, he went to hit him, and he knocked his hat off, and he went and picked up his hat again, and he says he was a man; he wouldn't hit him when he wasn't looking; and he told the hobo to come again; and the hobo ran away, and he hollered, "I'm no match for you."

Q. What did the other hobo do? A. Nothing.

Q. He stood and watched it, did he? A. He walked along; he got out of reach, and then stood there.

Q. And what did O'Neil do after that? A. Well when the hobo bit him, he hit him.

Q. Oh, the hobo bit him; then he hit him? A. Yes, sir.

Q. And what did they do, — after O'Neil got bitten, and then he hit the hobo, what did O'Neil do then? A. Then he ran away with his hand up like that, saying, "I ain't no match for you."

Q. Who did? A. The hobo.

Q. With his hand up like that. Did O'Neil follow him up then? A. No, sir.

Q. Where did O'Neil go then? A. He went up over round by Ward's corner, and up towards home.

Q. You didn't see anything of him after that? A. He came back over the bridge, over to Joel Thayer's.

Q. Well, how long after that? A. About twenty minutes.

Q. Do you know whether he went up to the Woodward House when he went up around Ward's corner? A. He went past the Woodward House.

Q. You saw him go up past the Woodward House? A. Yes, sir.

Q. Then he came back again? A. Yes, sir.

Q. And what did he do then? A. He showed us the cut on his head, where he says he kicked him last night; when he was going home, he found him on his doorstep.

Q. Now, did you examine that cut? A. No, sir.

Q. Did you look at it carefully? A. No, sir.

Q. Do you know whether it was a cut or a scrape or a bruise? A. I don't know what it was. All he done was just took off his hat, and done that, and put it on again.

Q. Did you see what was there? A. I see it was a cut.

Q. Well, did you see whether there was a little scab on it, or a bruise, or what it was? A. Well, no; only it was a cut.

Q. You just looked at it? He took his hat off, put it back on, and you just took a glance at it? A. Yes, sir.

Q. And he was standing up straight when he did it? A. Yes, sir; we was sitting on the railing.

Q. You were sitting on the railing? A. Yes, sir.

Q. And then he went on and told you boys that story; and where did he go after that? A. I don't know.

Q. Did you see him again? A. I don't remember.

Q. Where did you go? A. Over the river.

Q. Well, did you see a good many people talking around on the street that day? A. They was all over it.

Q. Were there groups of people gathered here and there along the street? A. Yes, sir.

Q. And did you hear what they were talking about, if anything? A. No, sir.

Q. Did they appear to be excited in talking there? A. I didn't notice.

Q. What did you suppose they were standing around in groups on the street in the daytime there for? A. Talking.

Q. What did you think they were talking about? A. I don't know.

Q. Well, did you hear anybody talking about Mrs. McCloud's death? A. Only Walt Shaw and Mr. Peters and Jack.

Q. What did you hear Mr. Peters say? A. I didn't hear him say nothing.

Q. And did you see people gathered around Mr. Peters and those others? A. Yes, sir; there was me and Hurley and O'Connell gathered round; that is all.

Q. What O'Connell is that? A. Thomas.

Q. And you didn't pay much attention to the conversation that was had, did you? A. No, sir.

Q. And you are giving it according to your best remembrance, are you? A. I don't know what you mean.

Q. Why, you are giving it just about as you remember it? You don't mean to say that that was positively the conversation, do you, that took place between O'Neil and the different parties? A. Well, I am positive about what he asked Walt Shaw about the murder.

Q. Yes; you are positive of that? A. Yes, sir.

Q. You heard that? A. Yes, sir.

Q. The rest of it you are not positive about? A. I am positive about the hoboos.

Q. Those two things you are sure of? A. Yes, sir.

Q. And are you just about as positive about his being drunk? A. No, sir.

Q. But you noticed that he was under the influence of liquor? A. Yes, sir.

Q. Who have you talked with about this? A. What?

Q. Who have you talked with? Did you testify at the inquest at Shelburne Falls? A. Yes, sir.

Q. Did you testify before the grand jury? A. No, sir.

Q. Here in Greenfield? A. I was down here on the last day for it.

Q. Did you testify before the second inquest? A. No, sir.

Q. And who was the first person that you told this story to that you have told here to-day? A. To that fellow.

Q. This gentleman here [indicating Mr. Hammond]? A. Yes, sir.

Q. And you have not told it to any of the officers since, have you, — the state officers? A. I have not.

Q. And you have told it as near as you can remember, have you? A. Yes, sir.

Re-direct Examination.

Q. (by Mr. HAMMOND). An officer summoned you to come into the town hall at Buckland, — some one came out and asked you to go in? A. Yes, sir.

Q. And you were called into a room where Judge Lyman was sitting, where there were five or six people, and where I was? A. Yes, sir.

Q. And did I ask you questions about it, and did you tell the story you have told here to-day? A. I told it to you.

WILLIAM J. MORRISSEY, 2d — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. William Jeremiah Morrissey.

Q. Where do you live? A. Shelburne Falls.

Q. Which side? A. Buckland.

Q. What is your father's name? A. Jerry.

Q. Jeremiah. How old are you? A. Fourteen.

Q. Did you know John O'Neil by sight before he was arrested?
A. Yes, sir.

Q. How long had you known him? A. I don't know.

Q. Do you know Denny O'Brien? A. Yes, sir.

Q. Were you and Denny O'Brien together on the Saturday afternoon that Mrs. McCloud's body was found? A. Yes, sir.

Q. And where were you and Dennis? A. On the Shelburne side of the river.

Q. When you were at that place, whether or not you saw John O'Neil? A. He was standing near Knowlton's store.

Q. He was standing near Knowlton's shoe store. Did you hear something which John said, and, if so, tell all that was said. A. There were two hoboos going across the river, and he said, "There is the fellow done me out of ten," and he followed him across the river.

Q. Did you say he followed them across the river? A. Yes, sir.

Q. And to what point did he follow them? A. I didn't go across the river.

Q. Did you hear what occurred over the river? A. No, sir.

Q. And could you see where John O'Neil went? A. No, sir.

Q. You did not see him going up around Ward's corner? A. No, sir.

Q. Whether or not you saw him as he came back again over the bridge later? A. I saw him when he came back.

Q. About what time was it when he came back over the bridge?
A. I don't know what time it was.

Q. Whether or not it was the middle of the afternoon? A. Pretty near it, I guess.

Q. And when he came back were you and Dennis O'Brien together, — was Dennis there? A. I think he was.

Q. Now tell what occurred when O'Neil went back. A. When he came back he says one of them hoboos was on his steps the night before, and he got frightened, and the hobo kicked him in the head; one of the hoboos kicked him.

Q. Did he tell you what time of night it was? A. No, sir; I don't think he did.

Q. That the hobo was there on the steps? A. I don't think that he did.

Q. Stop and think; see if you can recall it. A. I don't believe he did; he said last night; that is all, I think.

Q. Whether he showed you anything? A. He showed us a cut on his head.

Q. Tell the jury about where it was. A. I don't remember what side it was on.

Q. Well, as nearly as you can. On your own head it was about whereabouts? A. About here on his own head, I guess [showing].

Q. How did it look? A. Kind of like a bruise.

Cross-examination.

Q. (by Mr. DOWLIN). What did you say your name was? A. William Jeremiah Morrissey.

Q. Where do you live? A. Buckland side of the river.

Q. Whereabouts, on what street? A. Conway Street.

Q. Down by the cutlery factory? A. Yes, sir.

Q. Well, where did you meet Denny O'Brien that day? A. On the street.

Q. Whereabouts on the street? A. On the Shelburne side; I don't know just where.

Q. I didn't hear you. A. On the Shelburne side.

Q. Whereabouts on the Shelburne side? In front of what building? A. I don't remember.

Q. But you saw him there on the street on the Shelburne side? A. Yes, sir.

Q. What time did you meet? A. After dinner, right after dinner.

Q. One o'clock? A. I guess it was before 1.

Q. You think it was a little before 1. Well, after you first met Denny O'Brien, where did you and Denny O'Brien go together? A. We stood in front of Knowlton's store.

Q. Did you meet in front of Knowlton's store? A. I don't remember where I met him.

Q. Do you remember where you went after you met him, where you and he went together? A. We didn't go anywhere; we stayed there on them steps.

Q. Well, the first you remember of Denny O'Brien was in front of Knowlton's store. Where did you go after you had stood in front of Knowlton's store for a while? A. They followed Jack and the hoboes across the river, and I went across the street to talk to another boy.

Q. Who followed Jack and the hoboes across the river? A. O'Brien and Finnegan and O'Connell.

Q. Did you go across the river? A. No, sir.

Q. How did they come to follow Jack and the hoboos across the river? A. I don't know; they saw him following them, I guess.

Q. Did you see what Jack did? A. I didn't see; I didn't go across; I couldn't see from the Shelburne side.

Q. Did he walk fast when you saw him following them across? A. Yes, sir; pretty fast.

Q. Were you close to Jack when he was telling you the story about the hoboos kicking him afterwards? A. Yes, sir.

Q. How long afterwards was that? A. Oh, it might have been — it couldn't have been over half an hour.

Q. About half an hour afterwards? A. Yes, sir.

Q. Did you notice that he had been drinking any? A. No, sir.

Q. You didn't notice that he had been drinking, or not; and he told you about being kicked by the hoboos there just as you have told? A. Yes, sir.

Q. Said they kicked him in the head? Did you examine the cut in the head? A. No, sir.

Q. Didn't see it? A. I see it; he showed it to us.

Q. You didn't examine it, so you can tell what it was, anything about it? A. No, sir.

Mr. DOWLIN. That is all.

JAMES F. FINNEGAN — sworn.

Q. (by Mr. HAMMOND). What is your full name? A. James Finnegan.

Q. Any middle letter? A. Yes, sir.

Q. What? A. F.

Q. You live in Shelburne Falls? A. Yes, sir.

Q. Which side? A. Buckland side.

Q. Do you know John O'Neil? A. Yes, sir.

Q. Did you see him on the Saturday afternoon that Mrs. McCloud was found dead? A. Yes, sir.

Q. Where? State to the jury all about it, — what was said and what you heard. A. I saw him by Knowlton's on the Shelburne side. I heard him say that there was the two hoboos that done him out of the ten last night, and he went over the river; and the boys went over ahead of me, and I just got over there, and they started to fight, and I see him hit him twice; that is all.

Q. Were any other persons there when he spoke of the hoboos? Who were the persons he spoke to? A. I can't remember all of them.

Q. Did you see any persons he called hoboos? A. Persons he called hoboos?

Q. Did you see the two men he called hoboos? A. Yes, sir.

- Q. How did they look? A. They looked as if they were hoboos.
- Q. Did you see John O'Neil after the fight? A. Yes, sir.
- Q. Where? A. Buckland side.
- Q. Did you see him at a later period when he went over the bridge to Bridge Street? A. No, sir.
- Q. You weren't there? A. No, sir.
- Mr. HAMMOND. That is all.

Cross-examination.

- Q. (by Mr. DOWLIN). Were the two men that you saw strangers there? A. Yes, sir.
- Q. How long had you lived in Buckland? A. I lived most of my life.
- Q. Speak so I can hear you, please. A. Lived most all my life.
- Q. Pretty well acquainted there with the people? A. Yes, sir.
- Q. And these two men that you have described to the district attorney you never saw before in your life there, did you? A. Not that I know of.
- Q. Where was the first place that you saw those men that day? A. Right on the other side of the bridge, by Knowlton's.
- Q. Is that the first place you saw them? A. That is the first place I saw them, as I know of.
- Q. Have you told any one else that you saw them anywhere else before that time? A. No, sir.
- Q. And where did you see O'Neil first speak to them? A. Right by Knowlton's, right across the bridge on the Shelburne side.
- Q. I can't hear you; speak louder. A. Just about two or three feet away from him.
- Q. What was it that he said? A. He said, "There are two hoboos that done me out of ten dollars."
- Q. And in consequence of that remark what did you see him do? A. I saw him start over the bridge after them.
- Q. You saw him start over the bridge after them just as soon as he made that remark? A. No, he stayed just a little while.
- Q. What did he say? After he made that remark, before he started after the hoboos, did he say anything to you boys? A. No, sir.
- Q. Did he say anything to any one? A. No, sir.
- Q. What did he do, — stand there without speaking or doing anything? You say he stood there a few minutes before he started after them. A. I didn't see him do anything.
- Q. You saw him stand there a few minutes before he started after them? A. Yes, sir.
- Q. What is that? A. Yes, sir.

Q. Had they got across the bridge when he started after them?
A. No, sir.

Q. Well, in what part of the town of Buckland were you when you saw O'Neil catch up with them? A. I seen him with the hoboes; he was there in front of Jake Pfersick's saloon.

Q. But they had got across the bridge, and turned to the right, and gone up the State road there? A. Yes, sir.

Q. What did you see O'Neil do? A. I saw him strike him twice.

Q. Did you see either of the hoboes do anything? A. No, sir; I saw one of them trying to get away; that was all.

Q. So you saw him fighting there with hoboes? A. Yes, sir.

Q. Jack was drunk then, wasn't he? A. Yes, sir.

Q. You noticed that he was drunk in front of Knowlton's tin shop, didn't you? A. Yes, sir.

Q. You noticed him stagger when he went across the bridge, didn't you? A. I didn't pay any attention to him.

Q. Haven't you stated you noticed he was drunk, and saw him stagger when he went across the bridge? A. Not as I know of.

Q. But you are sure he was drunk? A. Yes, sir.

Q. And what did you see Jack do after he got through fighting with the hoboes? A. Turned around and went up Clement Street.

Q. How long was he gone before you saw him again? A. I couldn't tell you; I don't know as I seen him again.

Q. You didn't see him again that day? A. No, sir.

MARY WALL — *sworn*.

Q. (by Mr. HAMMOND). What is your name, Mary? A. My name is Mary Wall.

Q. Do you remember the morning that Mrs. McCloud's body was found? Do you remember about it? A. No, sir.

[Examination continued by Mr. Knowlton.]

Q. You remember the time they found Mrs. McCloud's body in the woods? A. Yes, sir.

Q. You know where Mrs. O'Neil lived? A. Yes, sir.

Q. Did you go to her house that morning? A. Yes, sir.

Q. You know what time it was? A. I don't know what time it was.

Q. Had somebody told you something? A. Yes, sir.

Q. You had heard about it, I suppose? A. Yes, sir.

Q. And did you see Mrs. O'Neil when you went to the house? A. Yes, sir.

Q. Did you see Mr. John O'Neil? A. Yes, sir; he was sawing wood.

Q. In the back yard? A. Yes, sir.

Q. Whom did you speak to? A. I spoke to Mrs. O'Neil.

Q. I don't want what she said, except you told her of the finding of the body,—I don't know as that is competent. You told her something? A. Yes, sir.

Q. Was John O'Neil there when you told her? A. I don't know if he was or not; I forget.

Q. You told her something? A. Yes, sir.

Q. About Mrs. McCloud, was it,—something about Mrs. McCloud? A. Yes, sir.

Q. Then what did Mrs. O'Neil do? A. I guess she dropped the clothes and went into the house.

Q. Did you see what she did then? A. I guess she went up to Mr. Murphy's.

Q. Did you hear her speak to John out in the back part? A. I don't remember; I forget.

Q. You did see her go out in the yard? A. No, I don't believe I saw her go out in the yard.

Q. Did you see John O'Neil go away? A. Yes, sir.

Q. How soon after you spoke to his mother? A. I guess a little while.

Q. Before you went off? A. Yes, sir.

Q. You were there when he went away? A. Yes, sir.

Q. You didn't hear what Mrs. O'Neil said to him, if she said anything? A. No, sir.

Q. Which way did John go when he went away? A. He went out the front door.

Q. Where did he go to? A. I don't know where he went to.

Q. Don't know whether he went up street, or down? A. No, sir.

Q. That is all you know about it? A. Yes, sir.

Q. Did you see whether Mrs. O'Neil went out into the back yard, or out the back door, or not, after you spoke to her? A. I don't know; I guess she did.

Mr. PARKHURST. Don't tell what you guess.

Q. (by Mr. KNOWLTON). You mean that you saw her? A. I saw her go into the house.

Q. Then did you see her go out of the back door? A. I don't know.

Q. Mr. O'Neil, when he went out the front door, did he have his coat on—his overcoat on? A. Yes, sir.

Q. Did he have his overcoat on when he was sawing wood? A. I don't know; I forget if he did or not.

Q. He had his overcoat on when he went out the door? A. Yes, sir.

Q. When she went to Mrs. Murphy's, which door did she go out of? A. The back, I guess.

Cross-examination.

Q. (by Mr. PARKHURST). How old are you, little girl? A. I am eight years old.

AUGUST F. RAGUSE — *sworn*.

Q. (by Mr. HAMMOND). Your full name? A. August F. Raguse.

Q. Your residence? A. Shelburne Falls.

Q. Which side? A. Shelburne side.

Q. On what street do you do business? A. River Street.

Q. Won't you point out the place where you do business? Turn around and point out on the map. A. Right here [indicating].

Q. On the Shelburne side? A. Yes, sir.

Q. And what is your business? A. Winter times I file saws.

Q. And who keeps the store or place where you have your business?

A. My brother keeps the store.

Q. What is his business? A. Cigar maker.

Q. Whether your place of business is in the same room? A. Same room.

Q. And do you know John O'Neil, the prisoner? A. Yes, sir.

Q. Did you see him on Saturday, January 9? A. Yes, sir.

Q. And where did you see him? A. In my place.

Q. And state the hour. A. After 12 o'clock.

Q. State fully all he said and did after he came into your store; tell the jury. A. Well, he came in and said, "What do you think about this crime?" — that it happened yesterday or last night, that is it. I asked him, "What crime?" He says, "This Crits." I asked him, "Who is Crits?" He says, "Crittenden girl." I told him to get out. He said, "Yes." "Well," he says, "they found her that side of the road, a little ways in the woods, and she must be choked to death;" and then he placed his hands on my throat. in that manner [indicating], and says, "That is the way it must be done, because she had a blue mark under here, and a swelling about as big as a hen's egg on the right side, on the neck;" and then he says, "It is too bad. My mother done the washing for her; and I hope that they will find the right man; and if they hang him, I would like to pull the rope for him."

Q. Which hand did he use, and won't you illustrate it on the Attorney-General? A. He took the right hand, in that manner [indicating on the Attorney-General].

Q. On whom did he place his right hand? A. On me.

Q. How much force did he use on your throat? A. Force enough so I noticed it.

Q. Can you state about how long after 12 it was? A. I don't know; my dinner was ready when he left the place.

Q. Had you eaten your dinner? A. No, I didn't have any dinner yet.

Q. Did you have your dinner before 1? A. Yes, sir.

Q. Was this before 1 o'clock, — his visit? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). Where did you say your place of business was? A. Shelburne side.

Q. On what street? A. On River Street.

Q. Will you point it out there on the map? A. [Pointing.]

Q. Sometimes called Water Street, is it? A. I always call it River Street.

Q. Whom was O'Neil with when he came into your place of business? A. Nobody.

Q. He came in alone? A. Yes, sir.

Q. Who was there? A. My brother.

Q. So there was nobody in there but you and your brother? A. No, sir.

Q. What do you sell there? A. Cigars and tobacco.

Q. Well, a tobacco shop? A. Yes, sir.

Q. Sell anything else there? A. No; oh, yes; we sell pipes, — that belongs to the tobacco business.

Q. Do you sell anything else besides what goes with the tobacco business? A. Yes, sir; cigars and papers.

Q. And what time of the day did I understand you to say this was? A. After 12 o'clock.

Q. Had you been out on the street that morning? A. No, sir.

Q. How long have you known O'Neil? A. Oh, I know him for several years.

Q. Had he ever been in your place of business before? A. Well, he had been in there several times, but a long time ago.

Q. And he walked in there, and how long ago was it he was there? A. Well, he came in the 9th of January.

Q. No, but how long before that was he in your place of business the last time? A. Well, it was about over seven or eight months before.

Q. Seven or eight months before? A. I think.

Q. Had you seen him to talk with him for seven or eight months? A. Yes.

Q. Well, did you notice, when O'Neil came into your place of business, any signs of liquor on him? A. I couldn't tell.

Q. You didn't pay any attention? A. No.

Q. If he had been drinking, you couldn't tell? A. No.

Q. And you say you got to talking with him about the finding of Mrs. McCloud up there? A. No, he came in —

Q. Did you say anything to him? A. No.

Q. When he came in? A. No.

Q. Did he speak to you first? A. Well, he spoke right in the middle of the store, right by the door, and when he came to say what was the news.

Q. And what did you say to that statement of his, "what is the news"? A. I didn't say anything; all I said, "Oh, get out," I wouldn't believe it.

Q. He said, "What is the news?" and you told him to get out, you wouldn't believe it? A. Yes, sir.

Q. Why should you tell him to get out, you wouldn't believe it, when he said, "What is the news"? A. Well, it was something I hadn't heard before, and I hardly wouldn't believe it.

Q. You hadn't heard anything about the body of Mrs. McCloud having been found before O'Neil came there? A. No, sir.

Q. You hadn't been out on the street that morning? A. No, sir.

Q. Had your brother been out on the street? A. No, sir.

Q. You had both been to work in your place of business all the morning? A. Yes, sir.

Q. Been any customers in there? A. No, sir.

Q. You hadn't had any customers that morning? A. No, sir.

Q. You do more of a wholesale business than a retail, don't you? A. Well, our business place ain't much of a business place; it kind o' lays off a little.

Q. And you had not seen any one to talk with that morning until O'Neil came in there? A. O'Neil.

Q. And O'Neil then told you about the death of Mrs. McCloud, and told you that she was choked to death, did he? A. Well, he didn't mention McCloud at all.

Q. Did not? A. No.

Q. What did he say? A. "Crit's girl."

Q. "Crit's girl"? A. And I asked him, "Who is Crit?" and he says, "Crittenden's daughter."

Q. And you didn't notice anything peculiar about his condition at all? A. No, sir.

Q. And he stood there and explained it to you just as you have explained it here? A. Yes, sir.

Q. How long was he in your place? A. Oh, I couldn't tell; I probably might — about six or seven minutes.

Q. Six or seven minutes? A. I think so.

Q. And turned right round and went out? A. Yes.

Q. Appear to be in a hurry when he was in there? A. I guess not.

Q. And where did you go after he left? A. I went to my dinner.

Q. Did you go out on the street after dinner? A. No, sir.

Q. Did you go out on the street that evening? A. No, sir.

Q. Who was the next person you talked with about the finding of Mrs. McCloud? A. Well, somebody came in, I don't know who it was, and I told him how he had told the story, and how he grabbed me.

Q. Well, when was that, the same day? A. The same day.

Q. And whom else did you talk with after O'Neil went out besides this party you have just spoken of? A. Well, there was another man came in there, and we asked him if he heard something about it. He says, "I heard all about it."

Q. And you wouldn't fix the time later than 1 o'clock? A. I couldn't say; it was after 12.

Q. After 12? A. Yes.

Q. That you were talking with him? A. Yes, sir.

Q. And you put it between 12 and 1? A. Yes, sir.

Q. You don't know just what time it was? A. No.

Q. It might have been nearer 1 than 12? A. It might possibly.

Q. You couldn't swear? A. No.

Re-direct Examination.

Q. (by Mr. HAMMOND). Do you have your dinner in the same block? A. Yes, sir.

Q. What is your mother tongue, English or German? A. German.

Q. To avoid ambiguity, please repeat the expression he used when he came in and said, "What is the news"? A. He came in and said, "What do you think about this crime that happened last night?"

JOHN F. RAGUSE — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. John F. Raguse.

Q. You are a brother of the last witness? A. My brother, — August F. Raguse.

Q. You live in Shelburne Falls? A. Yes, sir.

Q. And do business on Water Street? A. Yes, sir.

Q. What is your business? A. Cigar manufacturer.

Q. Whether you and your brother were there on Saturday noon, January 9? A. Yes, sir.

Q. Do you recollect John O'Neil coming into your place? A. Yes, sir.

Q. Won't you state now all that you heard him say and do, giving the whole conversation. A. He came in and said, "Did you hear about the affair of Crittenden's girl, happened last night? They found her dead in the woods." And he mentioned his mother, that

she done the washing for her; and Mr. Crittenden do not believe himself that she is murdered. And he showed my brother how it must be done,—by placing his hand on to his throat, and if they found the right man he would pull the rope for him.

Q. Won't you show to Mr. Knowlton how he put his hand on your brother's throat,—put your hand on. A. [Witness illustrates.]

Q. I didn't get what you said about if they got the right man. Will you repeat that? A. That is what?

Q. Will you repeat what O'Neil said about if they got the right man? A. He would pull the rope for him.

Q. About what time in the day was this? A. It was at noon time, between 12 and 1 o'clock.

Q. Had you and your brother eaten your dinner? A. No, sir.

Q. Do you take your dinners in the building? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). What did he come into your place of business for? A. He had no business.

Q. None? Do you sell anything else there besides cigars and tobacco? A. And pipes.

Q. And pipes? A. No, sir; that is all,—cigars, tobacco and pipes,—that belongs to the smoking line.

Q. Do you keep hard cider on sale there? A. No, sir.

Q. Nor anything else? A. No, sir.

Q. And at what time do you place this? A. Between 12 and 1 o'clock.

Q. You don't know exactly? A. Not exactly.

Q. Had you heard of Mrs. McCloud's body being found before that? A. No, sir.

Q. You don't know what the reports on the street were? A. No, sir.

Q. The first information you got, then, was from O'Neil, between 12 and 1 o'clock? A. Yes, sir.

Q. And when was the next information that you got from any one? A. That is not I know of.

Q. You don't know? A. I didn't went out of the house at all during that day.

Q. During that day? That evening, did you? A. No, sir.

Q. Didn't go out of the house till the next day, Sunday? A. Sunday; yes, sir.

Q. And so you didn't talk with anybody to get any other information until Sunday? A. With nobody, sir.

Q. And did you notice that O'Neil had been drinking any? A. At what time?

Q. When he was in your place of business. You didn't see him any other time that day, did you? A. No, sir.

Q. Well, that is the only time? A. That is the only time, sir.

Q. And at that time, did you notice that he had been drinking any? A. I couldn't say so.

Q. Could you say that he had not? A. Well, I don't know about that.

Q. You don't know? A. No.

Q. Didn't you have any customers in there from the time O'Neil was in there until night? A. One man came in after him, by the name of John Haigis.

Q. Did he tell you anything about the finding of the body? A. No, sir.

Q. Was there anything said between you and him about the finding of the body? A. No, sir.

Q. Or the death? A. No, sir.

Q. Was there any one else in your place of business besides John Haigis? A. No, sir.

Q. That was the only man that was in there, was it? A. Yes, sir.

Q. From the time that O'Neil was in there? A. No one after him came in.

Q. Well, wait till I get done. From the time O'Neil was in there until you closed up at night. A. Well, I can't recollect that.

Q. Do you remember anybody else coming in? A. I can't remember.

Q. You don't remember of any one else talking to you or speaking to you, or mentioning the fact of Mrs. McCloud's death there until Sunday, excepting O'Neil, do you? A. I can't remember.

CHARLES WOODWARD — *recalled*.

Q. (by Mr. HAMMOND). Charles Woodward? A. Yes, sir.

Q. Do you recollect the conversation back of Frost's stable about the lost ten-dollar bill, that you testified about before? A. Yes, sir.

Q. Will you state whether or not that bill was found? A. He stated to me, later in the day, it was.

Q. What did he say about it? A. He said he found it in his top vest pocket.

Q. Did he indicate which one? A. He stuck his hand in his pocket, I couldn't say which side.

Re-cross-examination.

Q. (by Mr. DOWLIN). What time was that, Mr. Woodward? A. I couldn't state the time.

Q. You don't know but what it was after dinner, do you, — after the dinner hour? A. Well, I don't remember much after dinner.

Q. Well, you can't state but what it was after the dinner hour, can you, positively? A. I couldn't state the time that we met back of there; no, sir.

Q. Well, it might have been after the dinner hour, mightn't it? A. Possibly.

WILLIAM P. MORRISSEY — *recalled*.

Q. (by Mr. HAMMOND). Mr. Morrissey, I wish to call your attention to the conversation in the rear of Frost's stable about the lost ten-dollar bill. Whether or not John O'Neil told you as to the finding of the bill? A. I couldn't say whether he told me he found it there or not.

Q. I mean later, whether you know as to the finding of it? A. He told me later in the day that he had found it.

Re-cross-examination.

Q. (by Mr. DOWLIN). When was that? When you saw him in the afternoon over by the electric car tracks? A. I couldn't say where nor when.

Q. Was it when he gave you the ten-dollar bill to go and get the pint of whiskey? A. I couldn't say.

Q. Do you know whether it was before dinner or after dinner? A. No, sir.

JOHN E. O'CONNOR — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. John E. O'Connor.

Q. Where do you live? A. Well, I am stopping in Fall River now, — working there.

Q. Where did you live about the first of January last? A. Westfield.

Q. Whether or not you saw John O'Neil and one Couard in Westfield at one time? A. Yes, sir.

Q. About what time? A. The 1st of January.

Q. Whether or not you did any business, or had any money transaction, with John O'Neil? A. I gave them a dollar.

Q. Did John O'Neil say anything to you as to his money needs? A. No, sir; he did not.

Q. State how you came to give him a dollar. A. I gave it to them so they would have a place to stay over night.

Q. State the talk. A. Oh, well, I don't know as I can state exactly the talk.

Q. Who asked you for money? A. Nobody.

Q. Who said he wanted any money? A. Well, he didn't; neither one of them did.

Q. How did you find out the occasion? A. Well, he asked me if I had anything on my hip. I told him no, but I could get him something if he wanted. So I thought by that he didn't have any money; I don't know whether he had or not.

Q. What did you do? A. I went and bought a drink.

Q. What did you do with reference to the money? A. It was after this I gave him the money.

Q. What did you give it to him for? A. So they would have a place to stay over night.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). Before you gave him the dollar, had you been drinking with him and Couard? A. He had been drinking; I wasn't drinking nothing myself.

Q. But they had been drinking? A. Yes, sir.

Q. And you let them have the dollar just as you have told? A. Yes, sir.

Q. Through no expression or request of his for it? A. No.

Mr. DOWLIN. That is all.

Mr. HAMMOND. That is all.

BAXTER NEWELL — sworn.

Q. (by Mr. HAMMOND). What is your name? A. Baxter Newell.

Q. Your residence? A. Shelburne Falls.

Q. Did you meet John O'Neil on Saturday, January 9? A. I did, sir.

Q. Where? A. In front of the store, on the store steps.

Q. What do you mean by the store? A. Newell's hardware store, sir.

Q. And on what street? A. State Street.

Q. What hour? A. Well, some time between 3 and 4; it was in the middle of the afternoon.

Q. State all which you saw and heard. A. Tell it just as I —

Q. Yes. A. Well, I went to the door, — I went to the door and looked up the street, and I saw two strangers up State Street. I saw O'Neil hit one of them, and I was — they were a few feet from the sidewalk; the man that he struck, he picked up — he knocked off his hat, he went back to the sidewalk, and O'Neil talked with him a few moments, and they turned; O'Neil turned and went back, and the strangers went up State Street. O'Neil come back to the store and asked if they had decided whether Mrs. McCloud was murdered or not. We told him that they hadn't decided. He wanted to know if

I see him have that scrap up the street. I told him I did. He says, "He cheated me out of \$5 last night, and won't give it to me." I says, "Who is it? Dubsey?" He says, "No, it's a damned tramp, but I know what his name is." A customer came in then, and I went back in the store. That is all I saw and heard.

Q. Will you turn to the map and indicate the way you mean when you say they went up State Street? A. Well, I was right about in here; they was right up in there [indicating].

Q. Whether they were going towards what is called towards Buckland, — that is north? A. They were going north; yes, sir.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). What did you say your name was? A. Baxter Newell.

Q. Where do you work? A. I work at Newell's hardware store, sir.

Q. And that is just across the street from the Buckland side of the bridge? A. From the bridge; yes, sir.

Q. What time in the afternoon was this that you have described? A. Well, between 3 and 4, somewhere; I don't know as I could state the time.

Q. Did you see him with the tramp? A. I did, sir.

Q. What did you see him doing? A. I see him hit the tramp once.

Q. Saw him fighting there? A. Yes, sir.

Q. And how long after you saw him fighting with the tramps upon State Street, the State road, was it that he came back to your place of business? A. Well, I should think it might have been two minutes; just long enough for him to walk down there.

Q. When he got down there what were you doing? A. I was talking to another gentleman.

Q. On the sidewalk? A. On the steps.

Q. Did you say anything to Jack? A. I don't remember about that.

Q. Did you inquire of him what he was doing up there or what he was fighting for, or anything? A. No, sir.

Q. And what did he say? A. Well, he asked the other gentleman if they had decided whether she was murdered or not.

Q. And what did the other gentleman say? A. The other gentleman said they had not decided.

Q. Who was the other gentleman? A. John Avery.

Q. What, if anything, did O'Neil then say? A. He referred to the scrap, as he called it, upon the street.

Q. Said, "Did you see the scrap I had up there"? A. Yes, sir.

Q. Something like that? A. Yes, sir.

Q. And what did you gentlemen say? A. I spoke up and said I saw he was having a little trouble.

Q. What did he say to that? Tell it just as it was. A. Well, he said he cheated him out of \$5 the night before, and wouldn't give it back to him.

Q. What did he say? One of those hoboos cheated him out of \$5 the night before? A. Of course he was referring to the man. He said he cheated him out of \$5. He didn't call any names as I remember.

Q. Do you know whether he said \$5 or \$10? A. He said five.

Q. Did he say anything more to you? A. Only he told me that he cheated him out of it, and that he knew his name.

Q. And did he have any appearance to you of having been drinking? A. He did, sir.

Q. Would you consider him drunk? A. Well, I considered him under the influence of liquor somewhat.

Q. You considered him under the influence of liquor somewhat? A. Yes, sir.

Q. And that was all that was said there? A. That was all that was said there.

IRA A. HOWE — *sworn*.

Q. (by Mr. HAMMOND). What is your full name? A. Ira A. Howe.

Q. Your residence? A. Shelburne Falls.

Q. Which side? A. Shelburne side.

Q. Place of business? A. On River Street.

Q. What is your business? A. Am clerk in the fish market.

Q. Whether or not you recollect seeing John O'Neil at your place of business on Saturday, January 9? A. Yes, sir.

Q. State when you first saw him on that day? A. Somewhere about 6 o'clock; I can't place the time exactly.

Q. Whether he came alone, or with others? A. No, sir; there was one other man with him.

Q. Name him. A. He was called Pfersick; a man I didn't know.

Q. State fully all the occurrence. A. Well, they came in there and wanted a plate of clam chowder, each of them; I got it for them, and they paid for it.

Q. Go on and tell the whole, from first to last. A. And Woodward came in and had a plate of clam chowder, and then they had another clam chowder around apiece; and they had in all three — six clam chowders and two boxes of sardines. That is all there is to it; they paid for it and went out.

Q. Won't you go right along with it? A. That is all there is to it; they paid for it and they went out.

Q. State about the paying for it. A. I don't know; he tendered the dollar, and I took out the three chowders, — 30 cents.

Q. Who tendered the dollar? A. Mr. O'Neil.

Q. How much did you take out? A. Thirty cents.

Q. Was there any further indebtedness? A. They got more clam chowders; I don't remember the order they ran now.

Q. What did you do when they gave the second order? A. I got my pay.

Q. How much? A. I think they ordered two the next time, but I don't remember exactly.

Q. Could you state how much money they spent with you? A. Yes, sir.

Q. How much? A. They spent 80 cents with me.

Q. Do you recollect any incident with reference to the losing of money? A. They dropped a quarter.

Q. Who did? A. Mr. O'Neil.

Q. State all about it, and whether he said anything about it. A. He looked for the money and couldn't find it; we never found it.

Q. Whether he made any remark about its going? A. I don't remember as he made any remark about its going.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. DOWLIN). What time was this? A. About 6 o'clock.

Q. In the evening? A. In the evening; yes, sir.

Q. Had they been drinking? A. Well, I couldn't say as they had been drinking; they came in straight, and behaved themselves.

Q. They came in about 6 o'clock in the evening, and called for those clam chowders, and they had two clam chowders apiece? A. I didn't say that, — I didn't state it like that. I said Mr. O'Neil and Mr. Pfersick came in first and got a clam chowder apiece; and then Mr. Woodward came in and got one; they had three of them.

Q. And after that, go on. A. I don't remember the order they came, after that; they had only three clam chowders and two boxes of sardines.

Q. And you have stated it just as you remember it? A. As near as I can remember it, sir.

Q. How much money did you receive from them? A. I received 80 cents.

Mr. DOWLIN. That is all.

Re-direct Examination.

Q. (by Mr. HAMMOND). Did he give any money besides what he paid you and what he lost? A. Ten cents.

Q. To whom? A. To a boy that helps us round sometimes; he is a foolish fellow.

FREDERICK C. MANN — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Frederick C. Mann.

Q. What is your business? A. Telegraph operator.

Q. At what place? A. Shelburne Falls.

Q. Whether or not any part of your duty is the keeping a record of the arrival and departure of trains? A. Yes, sir.

Q. Whether in fact you have kept a record of January 8? A. I have.

Q. Whether in fact you are able to state at what time the two trains arrived in the evening of Friday, January 8; if so, you may state in reference to those trains. A. January 8, New Haven No. 905 arrived at 7.09. Fitchburg No. 3 left at 7.17 P.M.

Q. When did it arrive? A. It might have arrived about three minutes before.

Q. Whether that is the regular time? A. Yes, that is right on time.

Cross-examination.

Q. (by Mr. DOWLIN). The Fitchburg departed at 7.17? A. Yes.

Q. And the New Haven and Northampton stops there? A. Yes, sir.

Q. And you take the time of the arrival of that train? A. Yes, sir.

Q. And the time of the departure of the Fitchburg train? A. 7.17.

Q. And as to the time of its arrival, you cannot state? A. Well, it stops there about three minutes, you know, not more than that.

Q. Its usual stop is not more than three minutes? A. Well, if they don't stop more than three minutes, we make no note of the arrival, but just put down the departure.

Q. The New Haven train backs up away from the depot before the other train comes in? A. Yes, sir; backs up on the middle siding.

Mr. DOWLIN. That is all.

JOHN J. MURPHY — *sworn*.

Q. (by Mr. KNOWLTON). What is your whole name? A. John J. Murphy.

Q. You are a milkman? A. Yes, sir.

Q. You have a regular milk route? A. Yes, sir.

Q. Are you related to Matty Boyle? A. Yes, sir.

Q. What is the relation? A. I am his uncle.

Q. And where does he live? A. Lives on Green Street.

Q. Somewhere near O'Neil's? A. Yes, sir.

Q. How many houses away, — do you remember? A. Two, this side.

Q. And do you go over the same route every morning, or did you then? A. Yes, sir.

Q. And did you have a regular time of doing it? A. Yes, sir.

Q. The morning that this body was found in the woods, was Matty Boyle with you any part of the morning? A. Yes, sir.

Q. What part was he with you? A. He started with me that morning, I think.

Q. From home? A. Yes, sir.

Q. About what time did you start from home? A. Why, from quarter to half past 7; I won't say, because I didn't look at the time.

Q. You live out of the village somewhere? A. Yes, sir.

Q. I won't take time to detail your movements. Where is the last place you go to? A. Mrs. Howson's, on the cutlery road, this side of the cutlery, just the first house.

Q. Did you at any part of the trip go to your sister's house, Mrs. Boyle's? A. After I got through I stopped there.

Q. That was the last place you went to, then? A. Yes, sir.

Q. After you got through with customers? A. Yes, sir.

Q. And did Matty Boyle stay with you all the time, or did you leave him anywhere? A. Stayed on the team while I went in to my sister's.

Q. Went into your sister's? A. Yes, sir.

Q. You didn't see O'Neil yourself? A. No, sir.

Q. About what time that morning do you fix it, that you were at your sister's? A. Well, I couldn't fix it any time for sure, because I didn't have any time, nor didn't look at the time.

Q. Can you give some approximate time? A. I should say it was somewhere about 10 o'clock.

Q. On your way, had you seen anything of Dr. Canedy? These questions are simply for fixing time. A. I think I saw Dr. Canedy when we drove up to the store, crossing the bridge, or just driving off the bridge.

Q. What store was that? A. Mr. Amstein's.

Q. And he was driving towards Buckland? A. Yes, sir.

Q. Alone, or with somebody? A. I think there was a man in the team with him.

Q. You don't know? A. No, I didn't take notice.

Q. Driving fast? A. Considerably so, fair gait.

Q. At that time had you heard of the death yourself? A. No, sir; I had not heard of it.

Q. Did you hear of it before you got to your sister's? A. No, sir.

Q. About how long was it after you saw him driving over the bridge, before you got around to your sister's, Mrs. Boyle's? A. Well, not a great while, I shouldn't say. I just came from the store to my sister's, I believe; I done an errand in the store.

Q. And then, after you left your sister's, did you see Dr. Canedy again? A. I don't remember.

Q. Were you at your sister's more than once that morning? A. I think not; I think I didn't stop when I first went round to go up.

Q. I meant after that time when you last stopped, 10 o'clock? A. No, sir.

Q. Did Matty drive off with you then? A. Yes, sir.

Q. And he was outside how long? How long were you in the house where your sister is? A. Well, I am sure I don't know, hardly; not a great while.

Q. Half an hour, or a minute or two? A. Not half an hour; I should say in the neighborhood of ten minutes.

Q. You stayed there a little longer than you would at a regular customer's? A. Yes, sir.

Q. And when did you first learn of the death? A. Matty told us.

Q. When did Matty tell you? A. When I was in my sister's.

Q. That time? A. Yes, sir.

Cross-examination.

Q. (by Mr. DOWLIN). Will you point out on the map where your sister lives, turning round to the map here? Now, this is Green Street, as I understand it. There is the O'Neil house. Well, now, where does your sister live? A. What street is this?

Q. Sears Street. A. My sister lives right opposite that [indicating].

Q. Right in here? A. Right in there.

Q. Right in there? A. Across the street from Sears Street.

Q. What time Saturday morning was it that you were there at your sister's? A. I think it was about 10 o'clock.

Q. But you have no means of definitely fixing the time? A. No, sir.

Q. It might have been before, or it might have been after? A. Yes, sir; a little.

Q. And you say that it was in at your sister's that some one came and told you? A. Yes, sir.

Q. About Mrs. McCloud? A. Yes, sir.

Q. Who was it told you? A. Matty.

Q. Matty who? A. Matty Boyle.

Mr. DOWLIN. That is all.

DANIEL W. HAMMOND — *sworn*.

Q. (by Mr. KNOWLTON). What is your name, Mr. Hammond?
A. Daniel W. Hammond.

Q. You are an officer of the State police? A. I am.

Q. State district police? A. Yes, sir.

Q. Where do you live, Mr. Hammond? A. In Haverhill, Mass.

Q. When did you first come to Shelburne Falls? A. On the evening of January 9.

Q. And in connection with the death of Mrs. McCloud? A. Yes, sir.

Q. And you were engaged upon that matter after that time? A. Yes, sir.

Q. For how long then? A. Till the next Saturday.

Q. You came what day? A. I came Saturday evening.

Q. One week, then? A. Yes, sir.

Q. When did you first see Mr. O'Neil? A. Tuesday morning, January 12.

Q. Was that the time he was arrested? A. Yes, sir.

Q. Were you present then? A. I was, on the outside of the building.

Q. What? A. On the outside of the building.

Q. Was he arrested at home? A. Yes, sir.

Q. And what was done after he was arrested? A. Took him to the railroad station and brought him to Greenfield.

Q. At any time after he was arrested, did you have or hear any talk with him? A. Yes, sir.

Q. Where was the first? A. In the station at Shelburne Falls.

Q. Tell all that you remember was said by you or anybody and by him. A. Mr. Munyan, the State officer with me, sitting alongside of Mr. O'Neil, asked me to sit beside him. I sat down. Mr. O'Neil said to Mr. Woodward, the local officer, "Didn't you see me over by the bank that night?" I said, "Before you say anything, Mr. O'Neil, I want to say to you this, that we are officers, and whatever you say may be used against you. You are not obliged to answer any questions." He said, "I don't know what I could say that could be used against me. I can account for every minute of my time that night." I then asked him, "How old are you?" His answer was, "Twenty-six years old." I said, "Were you born in this place?" He said, "I was born in Charlemont; I have lived

here twenty-four years ;” and I said, “ Where were you, — you were asking Mr. Woodward if he didn’t see you that night. Did you see him ?” “ Yes, sir ; we were over on the bank, a number of us, and he came and drove us away.” I then asked, “ Where were you the first part of the evening ?” He said, “ I came over the bridge about half-past 6 with a fellow by the name of Wood, and we met a girl named Toussoul that works in the hotel, and he stopped and spoke with her ; and I went on, and then went back to the Woodward House, and came over the bridge about ten minutes past 7, about the time the mail train gets in, with one of the selectmen, Kendrick. I asked him about getting work in the cutlery. I left him and went to the pool room. I then went back to the Woodward House and got a pint of whiskey and gave the bartender Smith a two-dollar bill, and he gave me back a one-dollar — a ten-dollar bill in place of a one.” And I said, “ What did you do with the ten-dollar bill ?” He said, “ I carried it back.” I said, “ It must have been a surprise party when you carried that back.” He said, “ We were all pretty drunk, and he didn’t notice it much.” He then said he went to the pool room and left the pool room about 10 o’clock and went over by the bank, and an officer started them from there ; he went over to the station, the railroad station, and from there to the engine house, and from there he went home ; got home about 2 o’clock ; and I asked him if he had any other money than that that he told me, and he said he had not. He said, “ I should not have done a thing like that. I have known her all my life.” Also, “ I have always had a good name.” I then asked him, “ Did you see Mrs. McCloud that night ?” He said, “ No, I have not seen her for over a week.” In speaking, when he asked Mr. Woodward about being there, I asked him who was there with him. He said, “ Morrissey and Dubsey Woodward ;” and turning to Officer Woodward said, “ Who else was there, Mr. Woodward ?” And Mr. Woodward replied, “ You state it.” I said to him, “ I don’t think you were so drunk that night but you know who was with you.”

Q. That all the talk at that time ? A. He also said, in answer to a question, that he had not been up to the scene of the murder ; was not there Sunday, nor at any other time. I believe that is all ; I don’t recollect anything more.

Q. Did you take notes of the conversation ? A. I did.

Q. You may look over your notes, and see if there is anything you have omitted. A. My memory serves me pretty well. I don’t think it is necessary. [After examining notes.] He did say, in answer to carrying back the ten-dollar bill, that he gave it to Rattie Haller, and then said Morrissey took it and got a pint of whiskey with it the next forenoon ; also said he had been round the town all the evening,

that he left the pool room at half-past 7, and had been around the town all the evening, and then went back again to the pool room, and left at 10 o'clock.

Q. Did you say where he said he got that ten-dollar bill? A. Yes, sir.

Q. I will ask you to repeat it. A. He went to the Woodward House to buy a pint of whiskey, gave a two-dollar bill, and in return got a ten-dollar bill for one from Smith, the bartender.

Q. Smith? A. Yes, sir.

Q. Now, then, after that he said, — I think you said, that when he carried it back, it was a surprise party? A. Yes, sir.

Q. Did he afterwards say anything more about carrying it back? A. On the train he said he didn't carry it back, but gave it to Rattie Haller, and afterwards said Morrissey took it and bought a pint of whiskey at Reed's the next forenoon.

Cross-examination.

Q. (by Mr. PARKHURST). What time in the day did you make the arrest? A. About half-past 5 in the morning.

Q. Was the defendant then ill? A. I couldn't say.

Q. Did he complain that he was? A. I had understood that he had been.

Q. Where did you make the arrest? A. At his home, Buckland.

Q. Did you have any talk with him from the time you made the arrest until you reached the depot? A. No, sir.

Q. When did you make the notes which you have exhibited here? A. At the police station in Greenfield, immediately upon arrival here, before I went to breakfast.

Q. You did not make them in the presence of the defendant? A. No, sir.

Q. You made them from memory some time afterwards? A. It takes about half an hour to run up here, and we left there at 6.04, if my memory serves me right, and we arrived here about half-past 6, and I made them before 7.

Q. They were made practically in about half an hour after the conversation? A. Yes, sir; as near as I can tell in that half hour.

Q. And who do you say were present when you had this talk? A. Mr. Munyan, the State officer in this district.

Q. Was there anybody else present in the depot? A. Others were in the depot, Mr. Smead, deputy sheriff, Wesley Woodward, the local officer of Shelburne Falls, also Mr. Pease, the district police officer in the western part of the State. There was a man by the name of Archer. They were in and around the depot, but not nearer than I am to you, — possibly passing one way and another.

Q. Since then you have had no talk with the defendant? A. Nothing more than to pass the time of day, I think.

Q. But no talk in reference to this case? A. No, sir.

Q. Have you stated all the defendant said to you on that occasion? A. All that I remember.

Q. Have you stated all the places which he said he was in that night? A. I think I have, all that he told me.

Q. Are you sure? A. Pretty positive.

Q. He stated to you, did he not, that he could account for every moment of the time that night? A. Yes, sir.

Q. And he undertook, in a general way, to state some of the places where he was? A. Yes, sir.

Q. You don't know that he undertook to state all the places, do you? A. No. His answer —

Q. That answers the question. Won't you please state to me the first place he named? A. The first that he named was asking Mr. Woodward if he didn't see him over by the bank that night.

Q. Did he state the time when he was there? A. No, sir.

Q. What is the next place he named? A. Then I asked him where he was the first part of the evening, and he said that he came over the bridge about half-past 6.

Q. One moment, — oh, at half-past 6. Proceed. A. And that he was with a fellow named Wood, a brakeman on the B. & M., and they met a girl named Tousseul, who worked in the hotel, and Wood stopped and talked with her, and he went on.

Q. O'Neil went on? A. He went on; yes, sir.

Q. O'Neil went on? A. Yes, sir; Wood stopped and talked with the girl.

Q. O'Neil went on? A. O'Neil went on.

Q. Then said where he went to? A. Said he then went back over the bridge.

Q. Did he say where he went to first after he left Wood? A. He said he went back over the bridge.

Q. Do you understand that he went no place else, from what he said, except across the bridge, after he left Wood? A. I understand he went across the bridge first, before he went to any place.

Q. But you don't know whether he meant to give you that impression or not? A. I only know that he answered the questions in that way.

Q. He answered the questions in that way, and you understood it in that way? A. Yes, sir.

Q. He told you that he had not seen Mrs. McCloud that night? A. Yes, sir; nor for a week.

Q. Nor for a week? A. Yes, sir.

Q. And then he undertook to explain to you something about the money he had? A. Yes, sir.

Q. Did he tell you that on the Friday night of January 8 he was intoxicated? A. Yes, sir.

Q. Did he profess at that time to you to be able to remember all that occurred on Friday evening? A. He claimed he could account for every minute of his time.

Q. Yes; but did he profess to undertake to tell you everything that occurred, or to be able to tell you? A. Well, he answered the questions in the manner in which I have described.

Q. You put certain questions, and he answered them? A. Yes, sir.

Q. You put the questions you chose, and he answered them as he chose? A. Yes, sir.

ALBERT SMITH — *sworn*.

Q. (by Mr. KNOWLTON). What is your whole name? A. Albert Smith.

Q. Last January, were you working for Mr. Daniel Woodward?
A. Philip Woodward.

Q. Philip Woodward, I mean. A. Yes, sir.

Q. And some time tended bar? A. Yes, sir.

Q. Do you know John O'Neil? A. Yes, sir.

Q. Do you remember that Friday evening, January 8, or that day, Friday, the evening before which the body was found? A. Yes, sir.

Q. And any time that day, did Mr. O'Neil give you a two-dollar bill? A. No, sir.

Q. Did he give you a bill of any kind? A. No, sir.

Q. And did you give him any change? A. No, sir.

Q. A one or ten or anything? A. No, sir.

Q. Did he buy any liquor of you at all that day? A. No, sir.

[No cross-examination.]

FRANK D. KENDRICK — *recalled*.

Q. (by Mr. KNOWLTON). Give your name, so that they will have it on the record. A. Frank D. Kendrick.

Q. In your previous examination, you said you left your home that evening, that Friday evening, about twenty minutes past 7? A. Yes, sir.

Q. And the next thing that you told us was of seeing O'Neil on the bridge. Now, before you reached the bridge, what were your movements? A. I came down the road —

Q. A little louder, please. A. Came down the road leading from my house into the Ashfield road, followed that down to the railroad

crossing, then went out Green Street, about ten rods to the house of William Mann, left milk there —

Q. What is that? A. Left some milk there; passed to the rear of his house on the railroad track, thence along to the bridge, down the steps onto Clement Street, up Clement Street to the corner of Sears and Clement streets, left milk at Clarence Ward's; returned down Clement Street to the corner of Ward's store, crossing diagonally, to the corner of the bridge, south side; saw O'Neil —

Q. That is all now, — you have told that part before. I would like to get that on the map. Shall I point for him, to save time? I think I know the route.

Mr. PARKHURST. Certainly.

Q. You say you left your house and went down Ashfield road to the railroad? A. Yes, sir.

Q. Then down which way? A. Then out Green Street, out here.

Q. To Kennedy's? A. Not quite so far; the house stands in there.

Q. You left milk? A. Yes, sir; passed through onto the railroad track; then out there, went down the steps that are there onto Clement Street, and right up to a house standing there; left some milk there, and retraced my steps down to the corner of the State road, down here to Odd Fellows block, and then crossed to the bridge.

Q. You were on foot? A. I was; yes, sir.

Q. And were you carrying this milk in one large can, and poured it out? A. No, sir; I had it in small cans.

Q. How many cans did you start away with? A. I had three, I think.

Q. Did you pick up a dry can as you left a full can? A. Yes, sir.

Q. And that was so everywhere? A. Yes, sir, excepting at the post-office; at Wood's I did not; I turned it into a dish at Wood's.

Q. That is over the post-office? A. That is over the post-office.

Q. Did you go up there to the place where the body was found on Saturday? A. I did; yes, sir.

Q. And were you then somewhat familiar with that locality? A. Well, I lived in my present place four years.

Q. Was there anything that made it easy to get to the place where the body was, in the condition of the wall or the woods up there?

A. In the wall there was a little opening there, and the path led directly down to where the body was found.

Mr. BEER. I would like to have it stated when Mr. Kendrick was there.

Mr. KNOWLTON. It has already appeared that he was there Saturday.

Q. What hour, please? A. I think about 10.30; I would judge that from memory when I first heard of it.

Q. Do you know whether that opening in the wall had been there before that day? A. It had been there.

Q. How about the path down through the woods, or the opening through the woods? A. There was a well-defined path.

Q. There was a well-defined path before that time? A. Yes, sir.

Q. Had you been acquainted with it? A. I had passed up that road before; I had never been down there before.

Q. Was that opening in the wall down hill, —

Mr. BEER. I object to that, as leading.

Mr. KNOWLTON. Wait till I get through, and see whether it is leading or not.

Q. Or below, or opposite the point which would be directly opposite the place where the body was found? [Objected to.]

SHELDON, J. I do not see any objection to that question. It is not at all suggestive of the answer.

Mr. BEER. We withdraw the objection.

Q. (by Mr. KNOWLTON). Draw a straight line at right angles to that road. Does this path go down so, or so, or so [showing]? A. It comes in obliquely, like that [showing].

Q. The word "Crittenden" happens to be there. Perhaps you can give us an idea of about where that opening in the wall was. Take the letters of the word "Crittenden." A. Well, I should say put it about that angle [showing].

Q. What letter? A. At the point of "D" [witness pointed to lower right-hand corner of the letter "D"].

Cross-examination.

Q. (by Mr. PARKHURST). That is where the path now is? A. Yes, sir.

Q. Do you mean to say that before this death there was a well-defined path where it now is? A. I intend to say —

Q. Answer the question. A. Yes, sir; an unobstructed path.

Q. Where does that path stop? A. I do not know, sir.

Q. When did you first pass over that path before this death? A. I don't know as I ever passed over it.

Q. Where did that path lead to from the road? A. I do not know, sir.

Q. To what length did you observe that path you spoke of before this day? A. I worked the road last summer, and noticed there was a path there.

Q. Last summer? A. A year ago.

Q. A year ago. You never travelled over that path? A. No, sir; I never did before this tragedy.

Q. You never observed it except as you observed it from the road? A. That is all, sir.

Q. You never observed the opening in the wall except as you passed over the road? A. I noticed it when I was working the road there.

Q. You haven't heard the testimony of the witnesses as to the path being there? A. No, sir; I have not heard the testimony of the witnesses; I have not been in here.

Q. Do you have much occasion to pass over this road? A. Why, no, not very often.

Q. How many times have you passed over the Crittenden road within the year last past? A. I couldn't say, positively.

Q. More than once? A. Yes, sir.

Q. More than twice? A. Yes, sir.

Q. You were one or are one of the selectmen of Buckland? A. I was last year.

Q. Did you offer a reward for the detection and conviction of the murderer of Mrs. McCloud? A. I was one of the board that did; yes, sir.

Q. How? A. I was a member of the board that did, sir.

Q. Has that offer been withdrawn? A. Not to my knowledge.

Mr. PARKHURST. That is all.

Q. (by Mr. KNOWLTON). Did I understand you to say that you had worked the Crittenden road? A. Yes, sir; I worked there personally, superintending the working of the road there, I should say two days, in August of last year.

WILLIAM M. SMEAD — *sworn*.

Q. (by Mr. KNOWLTON). What is your name, Mr. Smead? A. William M. Smead.

Q. You are a deputy sheriff? A. Yes, sir.

Q. You live in Greenfield? A. Yes, sir.

Q. Were you at Shelburne Falls the day that Mr. O'Neil was arrested? A. Yes, sir; I made the arrest.

Q. Had you been there before on duty? A. No, sir.

Q. Did you go there afterwards? A. Yes, sir.

Q. How many days did you spend there? A. I didn't go there in any connection with this case, only to summon witnesses.

Q. I see. Were you present when he was arrested? A. I made the arrest.

Q. Was anything said at that time? Tell the circumstances of it.

A. The time we went into the house, — we went to the house, I think we were — I don't remember — four or five.

Q. What say? A. There were four or five, perhaps more in all, that went. There were some that followed on, a reporter or two. Mr. Woodward, the night officer, that went with us to show us the house, he went to the back door, the kitchen door, I think, — it was at the L part of the house. Mr. Munyan went along with him. I was next; I stopped to speak to another officer.

Q. A little louder. A. I stopped to talk to another officer, and then went into the house. Mrs. O'Neil was in the sitting room, and I went in. Mr. Woodward and Mr. Munyan were in there. One of them asked where Jack, or John, was, I am not certain which. I think Mr. Woodward asked her where Jack was.

Q. (by Mr. PARKHURST). Was O'Neil present to hear this conversation? A. No, sir.

Mr. PARKHURST. I object to it.

Mr. KNOWLTON. I did not ask for that.

Q. Did you find Mr. O'Neil? A. I did.

Q. Where did you find him? A. I found Mr. O'Neil in a bedroom opening out of the parlor, at the front end of the house; that was the end nearest the street. He apparently was asleep. I went up to the bed, and touched him and turned down the bed clothes a little, and says, "Jack, I have got a warrant for you." He raised up on his elbow, and wasn't apparently very wide awake; and I says, "I want you to get up;" and I think he says, "What for?" and I says, "I have got a warrant for you;" and he says, "What for?" I said, "For the assault on Mrs. McCloud." He said, "Who said I did it?"

Q. What? A. He says, "Who says I did it?" I said that "No one says you did it." Mr. Munyan then says, "There is suspicion that you know something about it," or "something of it." He got up and dressed.

Q. What time of day was this? A. Between 5 and 6; I should think perhaps half-past 5 in the morning.

Q. Did you go to the depot with him? A. I did.

Q. Nothing more was said at the time of the arrest? A. Nothing particular. Of course there was —

Q. Did you yourself have any more talk with him? A. Nothing particular; no, sir.

Q. Did you hear any part of the talk by the officers and him? A. After we got to the depot, Mr. Woodward came in, — followed in very soon after; and he then says to Mr. Woodward, "You know that we were over there by the bank last night?"

Q. O'Neil said that? A. O'Neil said that. Then Mr. Hammond —

Q. "We were over to the bank last night"? A. Oh, not last night, not last night; the night of the —

Mr. KNOWLTON. Yes.

THE WITNESS. Then Mr. Hammond, the State officer, cautioned him, and said, "We are officers; whatever you may say may be used against you in evidence." He says, "I don't know as I can say anything that can hurt me or that can be used against me. I can account for myself." I then left him sitting by the stove, between Mr. Hammond and Mr. Munyan, and went across the room, and sat down perhaps ten feet from him.

Q. Did you hear any other conversation of any importance? A. No, sir; I heard part of the conversation, but no complete sentences.

Q. Do you know Walter Curtis? A. Yes.

Q. Did you summon him to court this week? A. I did.

Q. What day? Was it the same day he testified? A. The same day he testified, in the morning.

Q. Where did you summon him? A. In Deerfield.

Q. Did you have a talk with him about O'Neil, or did he say anything to you about O'Neil? A. He did; yes, sir.

Q. What did he say about him? A. He said that O'Neil told him in the workshop at the jail that he didn't see how that — how he could be convicted of murder; that Billy did the choking, and he did the rest of it. That was what Curtis told me.

Mr. KNOWLTON. That is all.

Cross-examination.

Q. (by Mr. PARKHURST). Did you summon Mr. Curtis to appear here? A. I did.

Q. What time in the day did you serve the summons? A. It was between 6 and 7 in the morning; nearly 7 o'clock, if I remember. It might possibly have been a little after 7, but about 7 o'clock.

Q. Did you talk with Mr. Curtis before you served the summons on him? A. I can't tell whether it was before or after.

Mr. PARKHURST. That is all, sir.

Mr. KNOWLTON. I want to prove by the Old Farmers' Almanac the time of the sunset and moonset that day; I don't know of any better way.

Mr. PARKHURST. That Friday night?

Mr. KNOWLTON. Yes. I have here the Old Farmers' Almanac, which I suppose is the most reliable thing in the world, and it appears by that almanac that on Friday, — this is calculated for Boston, I think, — that on Friday, January 8, the sun set at 4.30 and the moon at 10.34.

Mr. PARKHURST. What was the condition of the moon?

Mr. KNOWLTON. Well, that will tell its own story, — 10.34, that would be about quarter moon. The first quarter was the 10th, two days short of the quarter moon. The first quarter was 4 o'clock, January 10; 4 o'clock in the afternoon, January 10.

BENSON MUNYAN — sworn.

Q. (by Mr. KNOWLTON). Benson Munyan is your name? A. Yes, sir.

Q. You live in Greenfield? A. No, sir; I live in Williamsburg.

Q. And you are an officer of the district police? A. I am.

Q. State district police? A. Yes, sir.

Q. And when did you go to Shelburne Falls? A. I arrived in Shelburne Falls —

Q. A little louder, if you please. A. I arrived at Shelburne Falls on a train that gets there a little after 11 in the forenoon on Friday.

Q. The same day, on Friday? A. On Saturday.

Q. The same day the body was found? A. Yes, sir.

Q. And were you on duty in connection with that case after that time? A. I was.

Q. For how long? A. Until after he was arrested.

Q. And after that? A. Yes, more or less; I wasn't in very good health, so —

Q. Have you been up there at different times since? A. Yes, sir.

Q. Were you there when he was arrested? A. Yes, sir.

Q. Did you arrest him? A. I swore out the warrant, and gave the warrant to Mr. Smead.

Q. Mr. Smead arrested him? A. Yes, sir.

Q. Were you present when Mr. Smead arrested him? A. I was.

Q. State what happened. A. We went to the house a little after 5 o'clock in the morning, and we rapped at the back door, and we inquired if Jack was in. She said he was, and he was in bed. We asked her where, and she said in the room off from the front room, and we asked her to show us —

Q. I did not ask you this, but, however, it is of consequence. You went in the front room then? A. Yes, sir; and he was in bed. We opened the door and went into the room. Mr. Smead went and took the clothes off from him, pulled down the bed clothes and told him that he wanted he should get up and dress himself, as he had a warrant for him, and he wanted to know who said he done it. I said to him, "Nobody says you done it, but there is a suspicion that you might know something about it;" and he commenced to dress himself, and his mother said to him that, "Don't blame the officers, Jack, they are not to blame; they are only doing their duty." She says, "You know that God is good, and that he will take care of you if you are

innocent." I remarked to him that he should be treated fairly. He dressed himself and went down to the depot with us.

Q. When was the next thing said, if anything, — talk that referred to this case, I mean? A. Well, we were sitting in the depot; I had a little conversation with him.

Q. Tell that, all of it. A. It was just before Mr. Smead — he was sitting on the other side of him — just after Mr. Smead told him that we were officers, — when he said that we were officers, and anything that he said might be used against him.

Q. Did you hear that said? A. I did.

Q. By whom? A. By Mr. Smead. I said this to him, "Jack, when did you first hear of this?" He said, "Saturday morning, at half-past 9." I says, "Who told you?" He says, "My mother." I says, "Where was you?" He says, "I was behind the house, sawing wood." Says I, "What did she say to you?" "She came around and told me that the little Wall girl had just told her that they had found Mrs. McCloud up in the woods, dead." I said, "What did you do?" He said, "I put on my overcoat and went down street." I said, "What for?" He said, "To see about it." I said to him, "Did you find anybody down there that knew anything about it?" and he said, "No." I said, "Why didn't you go up into the woods where the body was, to find out about it?" He said, "He didn't know." Says I, "That would have been a good place to have found out about it, wouldn't it?" He said, "He supposed it would." I says, "Did you go up there that day?" and he said, "No." Says I, "Have you ever been up there since it was done?" and he says, "No." I said, "You knew Mrs. McCloud, didn't you?" He said, "He had seen her." I said, "How long ago did you see her?" He said, "About ten days ago." I think that was the subject of the conversation.

Q. Did you hear any talk between him and Mr. Hammond? A. Not very much.

Q. Did you have any further talk with him? A. No, sir; not about the case.

Q. I mean about the case. A. No, sir.

Q. If you heard any parts of talk between him and Mr. Hammond, you may tell it. This talk that you have described was with you? A. Yes, sir; I don't know as I can recall what he said to Mr. Hammond.

Q. Did you go up to the place where the body was said to have been found? A. I did.

Q. As soon as you got there, I suppose? A. Yes, sir.

Q. And you have said that that was about 11 o'clock? A. The train arrived there a little after 11, and I got into a team and went with Dr. Canedy at once, as soon as we could get up there.

Q. And the body had gone? A. The body had gone.

Q. Did you notice anything about the condition of the wall and the woods from the road to the spot where the body was pointed out to you, — where the place was pointed out to you? A. I did.

Q. What did you notice about it? A. There was a well-defined path from the wall down there.

Q. How about the wall? A. The wall — there was an opening in the wall.

Q. Was that directly opposite the place where the body was said to have been found, or diagonally from it? A. Diagonally from it.

Q. Diagonally which way, down hill or up hill? A. Down hill.

Q. That is, in coming up the hill you would turn off through that place in the wall before you got opposite the body? A. Yes, sir.

Cross-examination.

Q. (by Mr. PARKHURST). I suppose you examined the place where the body was found with a good deal of care? A. I examined it where I was told it was found.

Q. Now, speak up pretty loud; I am a little deaf and can't hear very well. A. I say I examined the spot where I was told the body was found.

Q. (by Mr. KNOWLTON). That was by Dr. Canedy? A. Yes, sir.

Q. (by Mr. PARKHURST). And you observed the stone wall and the opening in it? A. Yes, sir.

Q. And the path leading from the road down into the woods? A. Yes, sir.

Q. Won't you describe that path as it then was at about 11 o'clock on Saturday? A. It was a path that looked to me had been a good deal travelled by children.

Q. By children? A. Well, I don't know —

Q. Why children? A. I don't know, only what I was told about it.

Q. Why did you think it had been travelled by children chiefly? A. Because I was told before I went up there that the woods —

Q. Well, you mustn't tell what you were told.

SHELDON, J. Well, you asked why he thought so, and he thought so because he was told these things; that is responsive to your question.

Mr. PARKHURST. He said it looked as if children —

SHELDON, J. And then you asked why.

Mr. PARKHURST. And then I asked him why.

SHELDON, J. Now, he says that it is on account of what he has been told; that is answering your question.

Q. Do you say it looked as if it had been travelled by children, — looked so to you? A. It looked as though it had been travelled. I

don't know — I won't say that I think it was children any more than grown people.

Q. Well, now, that will do. But do you say it was a well-defined path? A. I do say that.

Q. Now, where did it lead to? A. Well, it led down as far as the brook.

Q. And where is the brook, in reference to the place where the body is supposed to have been found? A. Well, no more than, I should think, ten or twelve feet.

Q. Did the path extend beyond the brook? A. I think the path went over.

Q. Do you know whether it extended beyond the brook? A. I don't know only what I saw.

Q. Did you say that it did? A. I said that it did.

Q. How much further beyond the brook? A. It only crossed the brook to the path that came out of the other road.

Q. Did you follow it? A. I did.

Q. Was it as well-defined beyond the brook as it was to the brook? A. I don't think it was, until you go further over.

Q. Was that path you then saw the same path that is there now, so far as you know? A. Yes, sir; I don't know of its being changed.

Q. Now, when you went to arrest the defendant, was he told what he was charged with? A. I think his mother told him.

Q. Do you remember when any one of the officers who assisted in making the arrest, or who were present, told him that he was accused of making an assault upon Mrs. McCloud? A. I don't think they did.

Q. You heard nobody tell him, no officer tell him what he was arrested for? A. No, sir.

Q. Or what the charge was? A. No, sir; I think his mother told him.

Q. Where was the defendant when his mother told him? A. He was in bed.

Q. What did she tell him? A. She told him the officers were after him for the Mrs. McCloud matter.

Q. Is that the way she put it? A. I think so; in substance it was that.

Q. Now, did you go into the room with Mr. Smead? A. I did.

Q. And were you there all the time with him until the arrest was made? A. I was.

Q. Did you hear his testimony on the stand? A. I did not.

Q. I suppose you can't remember everything that was said? A. No, sir.

Q. After you got into the depot with the defendant, did you sit

beside him with Mr. Hammond? A. I sat beside him a short time; I walked around in the depot.

Q. Were you called to sit beside Mr. Hammond? A. No, I don't think I was.

Q. Or were you asked to do so by Mr. Smead? A. I don't think I was.

Q. Did you do it of your own accord? A. I did.

Q. And left when you got ready? A. Left when I got ready.

Re-direct Examination.

Q. (by Mr. KNOWLTON). Have you been up to that scene of the tragedy recently? A. Yes.

Q. How soon before the jury went there were you there? A. I think a week or ten days.

Q. And how did the appearance of that path and wall compare with what it was the day the body was found? A. As far as the leaves were concerned, it was different. At that time there were no leaves on the trees, no foliage, and there was when I was there a week or ten days ago.

Q. How about the opening in the wall? A. The opening in the wall was the same, as it seemed to me.

Q. In addition to the path, I intended to ask you, the well-defined path, was there anything about the absence of bushes from the opening in the wall to the place where the body was found, — that is, was there a clear place? A. It didn't seem to me to be clear any more than it was.

Q. You don't understand me. I am now going back to the day you were up there first; was there a clear place then? A. Yes, sir.

Q. Was that about the same as you saw two weeks ago? A. Yes, sir.

Re-cross-examination.

Q. (by Mr. PARKHURST). Isn't that path better defined now than it was when you first saw it? A. I suppose it is, a little.

Q. Isn't it? A. I say it is.

Q. And isn't it a good deal so? A. I don't think it is a good deal so.

Q. Well, don't you understand that there have been hundreds of people travelling over that path since you first saw it? A. I suppose there have.

Mr. KNOWLTON. That is the Commonwealth's case.

Noon recess.

AFTERNOON SESSION.

The roll of the jury was called, and the prisoner answered to his name.

OPENING ARGUMENT FOR THE DEFENDANT.

Mr. DOWLIN. Mr. Foreman and gentlemen of the jury: Twenty-seven years ago next month, John O'Neil, Sr., with his wife and little daughter Minnie, were living in the town of Charlemont in this county, and on the sixth day of that month there was born unto them a son. The son was named after his father, and that son, John O'Neil, is the prisoner who sits in yonder dock. When each of you were called as jurors, when the clerk of this court in his clear-cut tone said to you, "Juror, look upon the prisoner; prisoner, look upon the juror," and your eyes met, naturally the question arose in your minds then, Who is John O'Neil? What has been his life? And what explanation has he to offer of the proof, if any, that the government may produce before us on this witness stand? When John O'Neil was yet an infant, in the arms of that good-natured, kindly-faced old mother, whom we shall produce on this witness stand before you, to testify in behalf of her son, she with her husband and little daughter and the babe moved to the town of Buckland, where they have resided ever since. Then commenced the trials and the hardships of the O'Neil family. The husband was a common laborer on the railroad, and from the pittance received from his small wages, it was hard, extremely hard for him to provide for that constantly increasing family. But it will be needless for me to dwell upon this subject which is a familiar sight in almost every laboring man's home, where he has been blest with a large family but a scanty purse. And so that father for those reasons found it necessary, when the prisoner was at the tender age of eight years, to take him from the little district school and place him at work in a tobacco shop in the town of Shelburne. From the tobacco shop he was transferred to the railroad as water-boy, from water-boy as he grew older he was put to work in the section gang, and from the section gang was made a brakeman on a freight train. He worked as brakeman on the freight trains off and on during the latter part of his railroad life until October, 1896, when, owing to the hard times, with which you are all familiar, that visited our country at that time, the traffic of the railways was reduced and help was constantly being laid off, he among others was laid off. Then commenced his enforced idleness.

Up to the time when John O'Neil, Jr., left his home, after he became brakeman on the railway trains, he had always been a good, kind and obedient son. His pay envelope was always drawn by his father and turned into the general funds to aid and assist in the support of the O'Neil family, which, beside the father and mother, consisted of sixteen children. But when he left his home to stay over night, at the places where his freight train stopped, then commenced O'Neil's backward steps. His associations from early boyhood were with older men, and men in those avocations of life that do not set a good example for a boy. He acquired the habit of drink, and through that habit he found for his associates, men who were not of the best stamp of citizenship; and, as I have said before, when that enforced idleness came upon him in October, his natural associates in Shelburne Falls and Buckland were the same stamp of men as those whose characters you have read as they stood on this witness stand and testified in behalf of the government.

Now after having given you a brief outline of the history of the life of O'Neil, I desire to state that he, nothing but a boy, on trial here, — came into the world with no other legacy than that poverty, and has had that hard legacy to contend with. It is my duty, together with my learned associates, to defend him on this most serious charge; and if I should fail in ability, in conservatism or in work, God forgive me, because my duty to the court, to my client and to our client, is to present to you an outline of the defence that will be offered in his behalf.

As we understand the claim of the officers of the government, it is that Hattie Evelyn McCloud lived in her home on Crittenden road, as indicated on this map, which road you gentlemen have seen in the view that you have taken; that on Thursday afternoon, somewhere between the hours of 3 and 4 o'clock, she passed down the Crittenden road, down over Clement Street, across the bridge, and to the store of Amsden, where she had a check cashed and where she paid a bill. On the Shelburne side she made some purchases, on the Buckland side she made some more purchases, and she paid a small bill for millinery supplies. And then, with somewhere about \$16 in her pocket, or at least with money in her pocket-book, on Thursday afternoon, she turned Ward's corner, passed up Clement Street and up the Crittenden road, back to her home again.

The following day, Friday afternoon, she followed the same route down to the village of Shelburne Falls again, she made a few purchases, exchanged a book, as the evidence appears, where she had paid her bill the day before, bought another book and had that charged. Then she crossed the bridge, made a purchase in

Amstein's store just about 6 o'clock, and at two, three or five minutes after 6, on Ward's corner, in front of Odd Fellows block, she was seen by their witness, Earl Duncan,—the only witness that positively identifies her after she leaves Amstein's store. Some time between five minutes after 6 and 6 o'clock she passed up Clement Street and Crittenden road, to the point indicated opposite the spot where her body was found. There, or in that location, she was attacked, the hand of the defendant, the hand of the prisoner, was placed on her throat, and her life was taken. Then her purse was robbed, and the funds of that purse were the funds that the defendant was spending on Friday night, and on Saturday.

Now, gentlemen, we propose to prove to you, and we shall prove to you, starting from a point where the government leaves us certain facts, for it is conceded by all their witnesses, that John O'Neil never had any opportunity to see nor be around where Mrs. McCloud was, nor to have committed that crime before he left the Woodward House at about 6 o'clock Friday evening. He is covered by their witnesses all the afternoon, he is covered up to 6 o'clock nearly, by their witnesses. So it is useless for us to go into that part of the case. Now, from 6 o'clock, when he goes out of the Woodward House, accompanied by Timothy Kennedy, accompanied by that boy who was a relative of Kennedy's, and accompanied by James Wood, on to Clement Street, and stands at this point where Dennie O'Brien meets him, right there, just between the Odd Fellows building and that barn there, by the railroad track,—that is where we propose to take up the footsteps of John O'Neil, and prove to you that at no time from that time until the time when he is incontrovertably surrounded by the witnesses of the Commonwealth in Haller's pool room, did he ever have the opportunity to have committed that crime, if he had so desired.

We propose to prove by witnesses that followed his footsteps up to the top of the hill to his home where he had his supper, surrounded by his family, and then out on to the street again, and to the different locations that he visited that evening,—keeping track of him all the time, so that it would have been a physical impossibility for him to have gone, in the time that will be unaccounted for, even one way up to the spot where Hattie McCloud is supposed to have been murdered. We don't come before you, Mr. Foreman and gentlemen of the jury, and claim that on Friday nor on Thursday that he was possessed of money. We claim that that money came into his possession suddenly, and it was spent with the freedom of suddenly acquired wealth.

We propose to prove to you, by witnesses that are corroborated

on every side, where that money came from. We propose to show to you that that money never had any relation with the crime or to the murder of Hattie McCloud. We propose to prove to you, Mr. Foreman and gentlemen of the jury, that Hattie Evelyn McCloud never saw a single dollar of the money that was in the possession of John O'Neil that night, or the money that he was spending on Saturday.

We propose, further, Mr. Foreman and gentlemen of the jury, to prove to you the reason, and a reason that you can form your own judgment from when you hear it, of the statements that were made, of the inconsistent statements, of the statements of inquiries, etc., of which there has been a wealth of testimony accumulated, one witness after another of what Jack O'Neil said and what he did on Saturday, produced on this witness stand. We believe we can explain those in a manner which will satisfy the mind of every reasonable man on this jury.

Now we come to another part of the case, of the alleged statements made by John O'Neil while confined in the county jail of Greenfield. In reply to that part of the case, we desire to state to you that we propose to produce as witnesses men who have known these men all their lives, — these convicts that have come before you and told you the story that they claim O'Neil stated in that jail. We propose to produce men on this witness stand that will tell you the reputation of those men in the community where they lived before they were convicted. And we propose to produce before you other witnesses, that will tell you of a plot, a deeper and more damnable one was never conceived by the mind of man, than the one that witness Davis has tried to spring on the prisoner in that dock. The district attorney, in opening this case in behalf of the government, stated to you that it was one of circumstantial evidence. That is so. It is a case purely of circumstantial evidence, and there are certain rules of law that peculiarly govern the weighing, the sifting and the testing of circumstantial evidence; and I know of no better, no higher, no more thorough and competent way for that law to come to your ears, than to fall from the lips of this court. The court will explain to you all those rules of law that you will take into consideration and apply when you are considering the evidence of the witnesses that have appeared before you. But, Mr. Foreman and gentlemen of the jury, it is hardly necessary for me to speak to you of that one principle of the law known as a presumption of the law, — and that presumption is, that the prisoner is innocent until he has been proven guilty beyond a reasonable doubt. That presumption follows the prisoner through every successive step of this trial. That presumption, that mantle of innocence, is thrown around

him and held so tightly about him by the guardian angel of the law that it never leaves him until, by your verdict, you make the strong hand of the law thrust it away. Remember it, gentlemen, in considering the evidence. Remember that he is no ordinary criminal that appears before you, whose life has been steeped in crime, but a mere boy. The worst that can be said about him has been said by the lips of his own companions on this witness stand before you. But I keenly realize and thoroughly understand that, even in the minds of the strongest of men, when a man is charged with a crime as heinous as this, you look upon him — you cannot help at first — but look upon him with suspicion. We understand human nature. And all we want you to do, all we ask you to do, is to try him as a brother man, entitled to all the benefits of the presumption of the law. When a community is excited, when everybody is searching and seeking for an author of an outrage like this one, then, Mr. Foreman and gentlemen of the jury, we do not always stop to consider the rights of our fellowmen. Up to this moment, by no inquiry, by no seeking, by no indication, has a single syllable fallen from the lips of any one connected with this case as to what the defence will be. So, gentlemen, with an *ex-parte* inquest, with two *ex-parte* inquests, with practically an *ex-parte* hearing before a justice of our district court, with an *ex-parte* investigation before the grand jury, and for six long months the newspapers of the country spreading exaggerations and colored sensationalisms, by whose instigations we know not, nor do we say, has this defendant awaited the proper time and place to make his defence.

But you have heard the evidence of the government; how far that evidence has fallen short of what you have heard before, you are the ones to judge.

We have nothing in this case to disguise; we have nothing to hold back. We propose one by one to place our witnesses before you. Listen to them; watch them carefully; give unto them that credence which your own conservative judgment tells you they deserve; and then, when our evidence is all in, and we have said all we can say, we will leave the life of this prisoner with you and with his God.

EVIDENCE FOR THE DEFENCE.

BLANCHE E. JOHNSON — *sworn*.

Direct Examination.

Q. (by Mr. BEER). What is your name? A. Blanche E. Johnson.

Q. Where do you reside? A. Shelburne Falls.

Q. Are you the daughter of the undertaker, Mr. Johnson, there?

A. I am.

Q. How long have you resided in Shelburne Falls? A. Fourteen years.

Q. Did you know Mrs. Hattie Evelyn McCloud? A. I knew her by sight.

Q. How long had you known her? A. I can't say.

Q. Speak a little louder. A. I can't say how long I had known her.

Q. How frequently have you seen her within the last year or so? A. I can't say.

Q. Can you give us an idea how many times you had seen her in your acquaintance? A. Why, no, sir; I can't.

Q. Do you remember Friday, the 8th of January last? A. I do.

Q. Where were you in the evening of that day? A. I went down town in the evening.

Q. I understood your answer to be, "I went down town that evening"? A. Yes, sir.

Q. Whereabouts? A. Well, I went down through the street. I went as far as Halligan's store, and then I came back and went to the office.

Q. You turn around and look at that map. This is the Shelburne Falls side. Here is Bridge Street. Were you on Bridge Street? A. Yes, sir.

Q. And what hour in the evening were you on Bridge Street? A. Well, I started down town about a quarter of 8.

Q. Where is your home in reference to this street? A. It is above Mechanic Street.

Q. Here is Mechanic Street [indicating]; it is above there? A. Yes, sir.

Q. Did you see Mrs. McCloud that night? A. I did.

Q. Where was she? A. I saw her between — this is Shelburne Falls House? I think I saw her about in there [indicating].

Q. That mark Baker's store? A. Yes, sir.

Q. Whom were you with? A. I was with my sister.

Q. Was there a light there? A. Well, there was a light in Mr. Baker's store, and the electrics were lighted.

Q. The electrics were lighted on that side, were they? A. I think so; yes.

Q. Whether or not you saw her face? A. I did.

Q. And at what time of the evening was it? A. Well, it was some time between quarter of 8 and 8.

Q. Have you any doubt about it?

Mr. KNOWLTON. Wait a minute.

Q. Its being Mrs. McCloud?

Mr. KNOWLTON. Oh, that; I don't know as I will object to that.

SHELDON, J. You may put the question.

A. Well, I think I saw her; I am almost sure it was her.

Q. How soon after was your attention called to whether or not you had seen her?

Mr. KNOWLTON. Wait a minute. I pray your Honors' judgment on that.

SHELDON, J. Was her attention called to it in any particular way?

Mr. BEER. Yes, your Honor.

SHELDON, J. Well, that doesn't appear.

Q. Was your attention called to the fact of your seeing her after that?

Mr. KNOWLTON. I will take your Honor's ruling on that question.

SHELDON, J. Well, she may answer that question yes or no.

A. Yes.

Q. When? A. The next noon, — Saturday noon.

Q. Did you see her again that night? A. No, sir.

Q. Which way was she going? A. I think she was going down.

Q. Now, where is going down? A. Well, I can't say which way she was going; I have forgotten now

Q. Have you ever stated before? A. I think I have.

Q. Do you remember now what you have stated? A. No, sir; I do not.

Q. Which way were you going? A. Well, I was standing still when I met her.

Q. Whether she was going at all? A. She was.

Q. Did she pass you or you pass her or how? A. She passed me.

Q. As she passed you, was she going towards the bridge or going towards her home — your home? A. Well, I can't say which way she was going.

Q. Have you known? A. Yes, sir.

Q. And now you have forgotten? A. Yes, sir.

Q. Do you remember meeting me in Shelburne Falls last winter at the school? A. Yes, sir; I think I saw you.

Q. Do you remember telling me which way she was going?

Mr. KNOWLTON. Wait a minute.

SHELDON, J. Well, to refresh her memory, that may be asked.

Mr. KNOWLTON. For that purpose, I won't object.

A. Well, I know I told some one; I don't just remember who it was.

Q. Do you remember telling me she was going towards the bridge?

A. Why, I don't remember who I did tell which way she was going.

Q. Do you remember telling anybody that she was going towards

the bridge? A. No, sir; I don't remember which way she was going nor —

Q. Do you remember talking with your father or your mother about it the next day? A. Yes, sir.

Q. And did you then tell which way she was going? A. I don't remember.

Q. Have you testified at an inquest? A. I think so.

Q. What? A. I think I have.

Q. Before a court? A. No, sir — I don't know.

Q. Do you know Judge Lyman? A. No, sir.

Q. You say you think you have testified, — at Shelburne Falls? Do you remember this gentleman [indicating Mr. Hammond]? A. I think I have seen him at Shelburne Falls at the inquest.

Q. Do you remember stating when you saw that gentleman which way Mrs. McCloud was going? A. I think I have; I am not sure.

Q. Do you now remember, do you recall what you have stated as to which way she was going? A. No, sir.

Cross-examination.

Q. (by Mr. KNOWLTON). Did you know her to speak to her? A. I did not.

Q. You had never spoken to her? A. I think not.

Q. Did you notice how she was dressed? A. I did.

Q. Will you tell us? A. She was dressed in dark; she had on a large hat, a dark hat; I can't say whether she had on a coat or a cape.

Q. A dark hat? A. Yes, sir.

Q. Do you call green dark? A. Yes, sir.

Q. Have on a veil? A. I didn't notice.

Q. You say you don't know whether it was a coat or a cape? A. No, sir.

Q. Did she have any bundles? A. I didn't notice.

Q. How near to you did she go? A. Why, she passed me.

Q. As near as that man that is writing? A. Why, I should think so.

Q. And you didn't know whether she had bundles or not? A. No, sir.

Q. Why not? A. Why, I just noticed who the person was; that was all.

Q. What? A. I just noticed who she was; that was all of it.

Q. That is, you just took a glance at her? A. Yes.

Q. Now, don't you remember which way she was going? A. I don't think I can say which way she was going.

Q. I don't hear you. A. I can't say.

Q. Can't remember that? A. No, sir.

Q. Do you remember — I want to ask you the same question as my friend do you remember testifying in this case? A. I do.

Q. When Mr. Hammond asked you questions, the district attorney? A. I think so.

Q. And Mr. Greene asked some questions? A. Yes, sir.

Q. And you told this story then, didn't you? A. Yes, sir.

Q. And didn't you tell them which way she was going? A. I think I did.

Q. And you can't remember it now? A. No, sir; I don't remember it now.

Q. That is, the picture in your mind is not vivid enough for you to recall it, — the incident of it; the picture of it has gone out of your mind? A. Well, I have forgotten which way she was going; that is all.

Q. If you had the picture in your mind, you could picture which way she was going? A. Yes, sir.

Q. And you haven't got that picture in your mind? And the next news you heard she had disappeared? A. Yes, sir.

Q. And it came to your mind that you had seen her going somewhere? A. Yes, sir.

Q. On that street, I mean. Don't you think now she was going away from the bridge? A. I don't remember that.

Q. (by Mr. BEER). Has the whole of the picture gone from your mind? A. No; I can remember that I saw her, and I can remember how we were standing.

Mr. BEER. That is all.

CORA E. WHITE — *sworn*.

Q. (by Mr. BEER). What is your full name? A. Cora E. White.

Q. Where do you live? A. Shelburne Falls.

Q. Which side? A. Buckland.

Q. Whereabouts do you live? A. Whereabouts do I live?

Q. On what street? A. Sears.

Q. Which side of Clement Street? A. I don't exactly know the points of the compass; it is above Clement Street.

Q. Whether or not on the street where the bakeshop is? A. Yes, sir; it is very near the bakeshop.

Q. Do you remember Friday night, the 8th of January last? A. I do.

Q. Where were you? A. Part of the time I was at home; part of the time I was at the Odd Fellows' building.

Q. Were there any doings at the Odd Fellows' building? A. There was.

Q. What was it? A. Installation of officers for the year, and initiation, and a supper.

Q. Of what order? A. The Daughters of Rebecca.

Q. Whether or not there were many ladies at that place? A. There were quite a number.

Q. Now, we will start from your home. What time did you leave home? A. I left in the evening, about a quarter or ten minutes of 6.

Q. Which way did you go to the hall? A. I went straight out on Sears, to the corner of Clement, down Clement to the corner of Ward's building, round the corner into the door.

Q. At what time did you arrive in the building? A. It must have been about three or four minutes of 6.

Q. During your journey, — I will ask you before I ask that, did you know Mrs. McCloud? A. I knew her by sight only.

Q. How long had you known her? A. I can't tell you that; she had been pointed out to me in the street; that was all.

Q. How long since she was pointed out to you? A. I don't know that I can tell you.

Q. Over a year? A. I think not as long as that.

Q. How many times had you seen her between that time and the night you have spoken of? A. I can't tell you that.

Q. Have you ever seen her since she was pointed out? A. Yes, sir.

Q. About how many times? A. I am sure I don't know.

Q. Did you meet her during any part of your journey from your home to the hall? A. I did not.

Q. Did you meet any one or see any one, who looked like her? A. No, sir.

Q. Do you remember seeing any person near the hall? A. Yes, I did.

Q. Whom? A. I cannot be sure who everybody was I saw; I saw more than one.

Q. What? A. I saw more than one.

Q. How many were there? A. I saw three I was sure of.

Q. Whether men or women? A. They were men.

Q. Whereabouts were they standing? A. They were standing almost exactly on the corner by Ward's block.

Q. Whereabouts? A. Just towards Clement Street, not exactly on the corner, but just a little towards Clement Street.

Q. Up towards Clement Street? A. Yes, sir.

Q. Did you recognize any of them? A. I recognized one.

Q. Who was it? A. John O'Neil.

Q. Did you know any of the others? A. I did not.

Q. Did you see Mrs. McCloud after you had passed this man?

A. No, sir.

[No cross-examination.]

MAGGIE O'BRIEN — *sworn*.

Q. (by Mr. BEER). What is your name? A. Maggie O'Brien.

Q. Where do you live, Maggie? A. On Buckland side.

Q. Whereabouts? On what street? A. On Union Street.

Q. Dennis O'Brien your father? A. Yes, sir.

Q. You live in the house with him? A. Yes, sir.

Q. Do you remember the night of the 8th of January last? A. Yes, sir.

Q. Do you remember where you were? A. Yes, sir.

Q. Do you know what time you ate your supper that night? A. Yes, sir.

Q. What time? A. About quarter of 6.

Q. You remember the time you got through your supper? A. I got through supper at 6 o'clock.

Q. What did you do after that? Where did you go? A. I came home.

Q. Oh, were you living away from home? A. I was at that time; yes, sir.

Q. Where were you living? A. I was working for Mrs. Waterman.

Q. On what street? A. On Clement Street.

Q. Whereabouts in respect to the railroad bridge? A. The third house above.

Q. Which side going up? A. Right-hand side.

Q. And after supper, what did you do? A. I did the dishes.

Q. You know what time you got home? A. About half-past 6.

Q. Where did you go then? A. Went down to Emma Koch's.

Q. What time did you go there? A. Seven o'clock.

Q. What time did you leave there? A. About five minutes past 7.

Q. Whom did you leave with, if anybody? A. What, sir?

Q. Who went with you, if anybody? A. Emma Koch.

Q. Where did you two go? A. To the post-office.

Q. What time did you get to the post-office? A. About twenty minutes past 7.

Q. You remember the time you left there? A. No, sir.

Q. Whether or not before the mail was distributed? A. What, sir?

Q. Had the mail been distributed? A. Yes, sir.

Q. How long after the mail was distributed before you left? A. Went right off after the mail was changed.

Q. Can you tell us how long you were there waiting for the distribution of the mail? A. About fifteen minutes.

Q. Can you state what time the mail came in? A. Came in at seventeen minutes past 7.

Q. Came in at seventeen minutes past 7? A. Yes, sir.

Q. At the post-office? A. Train gets in at seventeen minutes past 7; gets down to the post-office about twenty minutes past 7.

Q. Then were you with Emma Koch all this time? A. Yes, sir.

Q. After leaving the post-office, where did you go? A. Directly over the bridge and up Depot Hill.

Q. Then where? A. Then I went up School Street and over and stood there.

Q. Up School Street? A. Yes, sir.

Q. Where did you stand? A. Stood at the corner of School Street and Hill Street.

Q. Please look around here. This is School Street [referring to map]. A. Yes, sir.

Q. Do you read any name of any street there? A. Stood right there at Amstein's [indicating].

Q. Amstein's house? What street did you stand on, corner of which? A. Corner of School Street and corner of Hill Street.

Q. Here is a street that is Hill Street. Is this the street that you stood on? A. Stood on the corner; yes, sir.

Q. Which corner? A. [Witness indicates].

Q. The upper or the lower corner? A. The lower corner.

Q. And who stood with you? A. Emma Koch.

Q. How long did you stand there? A. Well, about ten minutes.

Q. Did you hear the clock strike? A. Yes, sir.

Q. What time did it strike while you were there? A. Eight o'clock

Q. Did you see anybody go by? A. Yes, sir.

Q. Where did you see them or him? A. We saw two men coming up Green Street off the rocks, going towards Crittenden Hill.

Q. Two men? A. Yes, sir.

Q. How near were you to them? A. Oh, they were quite a ways from us.

Q. Did you notice how they were dressed? A. They had short coats on.

Q. Did you know them? A. No, sir.

Q. And when you saw them, what did you do? A. Then I started over towards my house.

Q. Your house is on what street? A. On Union Street.

Q. That is the street above Hill Street? A. Yes, sir.

Q. Now, when you got up on the Crittenden road, did you see anybody? A. Yes, sir.

Q. Was Emma Koch with you? A. She didn't start over the road with me; she left me at the corner of School Street.

Q. And you went alone, did you? A. Yes, sir.

Q. Did you see the two men again? A. Yes, sir.

Q. Now, go on and tell all that you saw and did from that time.

A. I saw the two men, and I looked up and I saw a woman ahead of them. And I started up the hill, and the two men stopped at Dewsnap's corner. And when they stopped, I turned round and came back and went home; came down the street, and went up — down Hill Street and went up to my house the front way.

Q. You went up Hill Street, you say? A. I went over Hill Street.

Q. Over Hill Street? A. Yes, sir.

Q. And your house is on the west side of Hill Street? A. Union Street.

Q. On the east side of Union Street? A. Yes, sir.

Q. It is marked there. Now, Maggie, please turn around. As I understand it, you came up through this street, Hill Street? A. Yes, sir.

Q. You were standing there?

Mr. KNOWLTON. I pray your Honors' judgment whether that is proper or not.

SHELDON, J. Well, this is a recapitulation of what she said.

Mr. KNOWLTON. I mean pointing on the map.

SHELDON, J. Yes, if there is any dispute about it, then you must ask the witness directly. I didn't understand there was any dispute as to this, as to her house. He is locating her house.

Mr. KNOWLTON. All right.

Q. Is that your house? A. Yes, sir.

Q. And, as I understand it, you went down Hill Street? A. Yes, sir.

Q. Now, after you got out into Crittenden road, where did you see the men? A. At this corner.

Q. That is the corner of Union Street, is it? A. Yes, sir.

Q. And where did you see the woman? A. Right here.

Q. In the bend there, was it? What direction was she going?

A. She was right at Meyers' path when I came away.

Q. Which way was she going? A. She looked as though she was going towards the Crittenden road, up the road.

Q. Who was that woman? A. I don't know.

Q. Can you describe her? A. No, sir.

Q. How large was she? A. Well, she looked to be quite a large woman.

Q. Did you know Mrs. McCloud? A. I knew her by sight.

Q. How long had you? A. Oh, I don't remember how long.

Q. Whether or not you had often seen her? A. Yes, sir.

Q. Whether or not she answered the description of Mrs. McCloud?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment.

SHELDON, J. No, that is not competent.

Q. Do you know what she was wearing? A. No, sir.

Q. Could you tell the color of her clothing? A. I think they were all dark.

Q. Did you notice whether or not she was carrying anything? A. No, sir.

Q. Had you ever noticed how Mrs. McCloud walked? A. Yes, sir.

Q. Had you noticed her form? A. No, sir.

Q. Whether or not this woman walked like Mrs. McCloud?

MR. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. That is not competent. She says she knew Mrs. McCloud by sight, doesn't she? She is able to make all comparisons herself, isn't she? She is able to say whether this was Mrs. McCloud or not.

MR. KNOWLTON. She says she don't know who she was.

SHELDON, J. I understood her to say that she knew Mrs. McCloud.

Q. Whether or not, in your opinion, it was Mrs. McCloud?

MR. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. She may answer that question.

A. I don't know.

Q. Have you ever stated that it was she?

MR. KNOWLTON. I pray your Honors' judgment to that.

SHELDON, J. If it is asked simply to refresh her memory, you may put the question.

MR. BEER. That is all, your Honor.

Q. Have you? A. What, sir?

Q. Have you ever stated that it was your belief or opinion that it was Mrs. McCloud?

SHELDON, J. Well, that is a different question from the one I have ruled upon. You asked whether she ever stated that it was Mrs. McCloud. I said you might ask that question to refresh her memory.

Q. Have you ever stated that it was Mrs. McCloud? A. No, sir.

Q. Or that you believed it was Mrs. McCloud? A. No, sir.

Q. Or that you thought it was Mrs. McCloud?

MR. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. I do not see how that is competent, Mr. Beer.

Q. Can you tell her height, — this woman's height? A. No, sir.

Q. Can you tell whether she wore a bonnet or a hat? A. No, sir.

Q. Whether she carried anything? A. No, sir.

Q. How far was she from you when you saw her? A. It was lost up to Meyers's.

Q. And how far were you from her? A. Quite a ways.

Q. Was there any light? A. Well, I don't remember; it was right.

Q. Bright from what? A. From where I could see.

Q. Any more than the moonlight? A. I don't remember.

Q. How near to the men were you? A. Well, not very near.

Q. Well, now, can you tell, by any object in this room, as far as anything that you see, or any person that you see? A. About from here to that bench [desk in the rear of the bar].

Q. Up to which desk? A. That bench.

Q. Oh, the bench? A. Yes, sir.

Q. You saw how they were dressed, did you? A. Yes, sir.

Q. You have said that they were wearing short coats? A. Yes, sir.

Q. Did you know either of them when you saw them as near as that bench is to you? A. No, sir.

Q. Had you ever seen them before? A. I might have seen them, but I don't remember.

Q. You didn't know either of them? A. No, sir.

Q. Can you state any other particular? A. No, sir.

Q. About them? A. No, sir.

Q. Which way did they go? A. They went towards the Crittenden Hill.

Q. How far did you follow them with your eye? A. I just see them — just see them start, and turned around and come right back.

Q. Were they following the woman?

Mr. KNOWLTON. Wait a minute.

SHELDON, J. She may tell what way they went, so far as she saw, and that is all she can do.

Q. Were they going in the same direction as the woman? A. Yes, sir.

Q. Now, you left the post-office, as you say, and came up towards Fard's store, and crossed Clement Street and up Depot Street, did you? A. Up Depot Hill.

Q. Did you see John O'Neil there? A. Yes, sir.

Q. Where was he? A. Coming down Depot Hill.

Q. Whereabouts? A. Right in front of the Woodward House.

Q. In front of the Woodward House? A. Yes, sir.

Q. How far down in front of the Woodward House did you first see him? A. Coming down the hill in front of the Woodward House.

Q. How far down in front of the Woodward House was he? Whereabouts in front of the Woodward House did you first see him? A. Coming down Depot Hill, in front of the Woodward House.

Q. Did you notice how he was dressed? A. Yes, sir.

Q. How was he dressed? A. He had a long, light ulster on, and a light hat.

Q. Was Emma Koch with you? A. Yes, sir.

Q. What time was that? A. I think about twenty minutes to 8.

Q. Did you see anybody there besides him? A. No, sir.

Q. Did you see any woman there? A. No, sir.

Q. Nor any men? A. No, sir.

Cross-examination.

Q. (by Mr. KNOWLTON). When you saw O'Neil coming down Depot Hill, had he got as far as the Woodward House when you first saw him? A. He was right in front of me when I first saw him.

Q. Right in front of you? A. Most in front of me; yes.

Q. Where were you, please? A. On the Woodward stone wall.

Q. And he was coming towards you? A. Yes.

Q. And he came from south of the Woodward House then, didn't he? A. He came down Depot Hill.

Q. He didn't come out of the Woodward House yard? A. He might have, but I didn't see him.

Q. You say you were sitting on the wall? A. No, sir; I was walking on the wall.

Q. And the way you understood it was, he was coming down the hill? A. As I thought it was; yes, sir.

Q. How near did he come? A. Right side of me.

Q. Which way did he come? A. He went right down Depot Hill near Ward's store.

Q. Was anybody with him? A. No.

Q. He was all alone? A. Yes.

Q. Did you see anybody else that you knew there? A. No, sir.

Q. You say it was a long ulster? A. Yes, sir.

Q. How far did it come down, below his knees? A. Yes, sir.

Q. Was the collar turned up? A. Yes, sir.

Q. And you think it was a light one? A. Yes, sir.

Q. How light? What do you mean by that? A. About like that man's that he has got on.

Q. This gentleman here? A. Yes, sir.

Q. It was moonlight? A. I don't remember.

Q. You judged by the moon, didn't you? A. I don't know; I don't remember.

Q. Did you speak to him? A. No, sir.

Q. How did you know it was twenty minutes of 8? A. When the mail came in, we left for the post-office twenty-five minutes past 7, and we hurried right across the bridge.

Q. Which way he went you don't know? A. No, sir.

Q. Which part of the Woodward House wall were you walking on? A. In front.

Q. Walking toward the depot? A. Yes, sir.

Q. Had you got as far as the walk or drive that goes up into the yard of the Woodward House? A. No, sir.

Q. Had you got up half-way there? A. No, sir.

Q. You had got by Clement Street, hadn't you? A. Yes, sir.

Q. And you were walking the same way that he walked? A. No, sir.

Q. I mean the opposite to the way he walked? A. Yes.

Q. And as you saw him, he was walking down there all alone? A. Yes, sir.

Q. Which street do you call Hill Street on that map? A. There [showing].

Q. And when you saw the two men come up from the rocks, you say you were on School Street, weren't you? A. The corner of School Street and Hill Street.

Q. Just point out where you were? A. [Does so.]

Q. Right there. And when you saw the men, where did you first see them? A. Here [showing], going up here.

Q. From where you stood, you couldn't see the rocks? A. No, sir.

Q. You only knew that they came from the direction of the rocks? That is all you knew? A. Yes, sir.

Q. They might have come from the Murphy House, mightn't they? A. No, sir.

Q. Why not? A. Because they came right up the street.

Q. The Murphy House has a door on this side? A. Yes, sir; but the door is nearer that.

Q. Nearer what? A. Nearer to us; we could see.

Q. That is, the door was on which side of the house? Just point with your finger on which side of the Murphy House? A. On this side [showing].

Q. And when they came out they would have to go round? Supposing they wanted to go up on Hill Street, how would they go? A. They would go out there [showing]; the door is there.

Q. Isn't there a door up on the other side, too? A. There is a door there.

Q. Isn't there a way to walk up there without going on to the rocks at all? A. Yes, sir.

Q. You don't know whether they came there, or from the rocks, do you? A. I think they came up the rocks.

Q. You don't know, do you? A. No, sir.

Q. There is a door right on that north end, isn't there? A. On the front side there is.

Q. On the side next to Green Street, isn't there a door? A. Yes, sir; in front.

Q. Now, you don't know whether they came from that door or from the rocks, do you? A. They didn't come out that way, because we could see.

Q. See what? A. They would come out that way.

Q. Do you mean to say that away down School Street you could tell whether they were in the yard, north of it, I mean, or in the rocks up there, all that distance? A. Yes, sir.

Q. You could tell, you say, if they came up the rocks they would come up there [showing]? A. Yes, sir.

Q. If they came out the yard they would come right there [showing]? A. There isn't any door there.

Q. There is an open space there? A. Yes, sir.

Q. They can walk right through there, can't they? A. Yes, sir.

Q. And you couldn't see them till they got by the corner? You didn't, anyhow, did you? A. No, sir.

Q. Do you mean you could tell whether they came up here or along there [showing] in the night? A. No, sir.

Q. Well, now, when they came along they crossed that street there? A. Yes, sir.

Q. And you walked up there? A. Yes, sir.

Q. And had they got any further than Dewsnap's when you got up here? A. They hadn't got quite up there.

Q. When you got here, they hadn't got quite up to Dewsnap's? A. No, sir.

Q. Did you walk pretty fast? A. Quite fast.

Q. You didn't run? A. No, sir.

Q. You didn't see any woman there? A. No, sir.

Q. And when you got there, you started up Dewsnap's a little ways, up that street a little ways? A. Yes, sir.

Q. You didn't go up as far as Dewsnap's, did you? A. No, sir.

Q. They stopped at Dewsnap's corner? A. Yes, sir.

Q. You didn't see them any more after that? A. No, sir.

Q. Whether they went any further or not, you don't know? A. They started up the hill.

Q. Didn't you say they stopped at Dewsnap's? A. But before I turned round, they started up the hill.

Q. Did you say that a little while ago? A. Yes, sir.

Q. Didn't you say when they stopped at Dewsnap's corner you turned around and didn't see any more of them? A. I thought I said they went up the hill.

Q. Do you know whether they went up that street or not? A. Yes, sir.

Q. They stopped when you started, you say? A. Yes, sir.

Q. And did they start again before you did? A. Yes, sir.

Q. Started on before you started? A. Yes, sir.

Q. Did you see anybody skating up in the road there? A. No, sir.

Q. Don't you know there is a skating pond up there? A. There is a brook there.

Q. Didn't you know it was frozen over that night? A. It might have been.

Q. Don't you know whether it was or not? A. No, sir.

Q. You can see it from the corner, can't you? A. Yes, sir.

Q. Don't you know there were people skating there? A. Well, I didn't see any.

Q. You didn't see anybody skating there?

[No answer, the witness being faint.]

EMMA KOCH — *sworn*.

Q. (by Mr. BEER). What is your name? A. Emma Koch.

Q. You live in Buckland? A. Yes, sir.

Q. On what street? A. School Street.

Q. And did you live there on the 8th of January last? A. Yes, sir.

Q. You remember Maggie O'Brien's coming to your house? A. Yes, sir.

Q. What time was it? A. Seven o'clock.

Q. Whether or not you and she went anywhere? A. Yes, sir.

Q. Where did you go? A. Down the street.

Q. Where? A. To the post-office.

Q. What time was it you left the post-office? A. About half-past 7.

Q. Do you know what time it was? A. No, sir.

Q. Whether or not the mail had been distributed? A. Yes, sir.

Q. And you had received your mail? A. No, sir.

Q. Where did you go after that? A. Came over the bridge, and came up Depot Hill, and over School Street, and up to the corner of Hill Street.

Q. Corner of what street? A. Hill Street.

Q. How long did you stay there? A. About ten minutes.

Q. Maggie with you? A. Yes, sir.

Q. While there, did you see anybody go by? A. We saw two men go by.

Q. Where did they come from? A. Came up from Green Street over the rocks.

Q. Could you see them plainly where you stood? A. Yes, sir.

Q. Did you notice how they were dressed? A. They had short coats on, — dark clothes and short coats.

Q. How long did they stay there? Do you know the time that Maggie left? A. We didn't stand there three minutes after we saw the men.

Q. Which way did she go? A. She went home over Hill Street, and home.

Q. Which way did you go? A. I went home.

Q. Do you know what time it was that she left? A. No, sir.

Q. Did you hear the clock strike? A. We heard the clock strike 8.

Q. Where were you then? A. Standing at Hill Street.

Q. Were you still together? A. Yes, sir.

Q. How long after the clock struck before Maggie left? A. Not quite three minutes.

Q. Did you see any woman about there? A. No, sir.

Q. Whereabouts on School Street did you live? Lower or upper, or what part? A. Middle part.

Q. You went directly home? A. Yes, sir.

Q. Do you know what time it was you were going up from Ward's corner towards home? A. About twenty minutes to 8.

Q. Did you see any man there that you knew, or near there? A. Yes, sir.

Q. How many persons did you see after getting past Ward's corner? A. One.

Q. Anybody with him? A. No, sir.

Q. Just one person? A. Yes, sir.

Q. You know who he was? A. John O'Neil.

Q. Whereabouts in reference to the Woodward House was he? A. He was about in the middle of that stone wall in front of the Woodward House.

Q. He was about in the middle of that stone wall in front of the Woodward House? A. Yes, sir.

Q. Do you know whether it was he or not? A. Yes, sir.

Q. How was he dressed? A. He had a long overcoat on and a light hat.

Q. Did you see his face? A. Yes, sir.

Q. Was there anything said? A. Yes, sir.

Q. How near were you to him? A. About a foot away from him.

Q. What? A. About a foot away from him.

Q. Did you see any woman there? A. No, sir.

Q. Or coming down near there? A. No, sir.

Q. Or going away from there? A. No, sir.

Mr. BEER. That is all.

Cross-examination.

Q. (by Mr. KNOWLTON). What was the color of the overcoat that O'Neil had on? A. Light overcoat.

Q. How light do you call it? A. About six feet.

Q. What? A. About six feet.

Q. That was the length of it, you mean? A. Yes, sir.

Q. Came pretty well down, did it? A. Yes, sir.

Q. Have the collar turned up, did he? A. Yes, sir.

Q. And he was all alone, was he? A. Yes, sir.

Q. Where were you when you saw him? A. In front of the stone wall of Woodward's.

Q. Walking on the wall? A. I wasn't walking on the wall, but Maggie was.

Q. He didn't speak to you? A. No, sir.

Q. And you didn't speak to him? A. No, sir.

Q. Were there other people on the street that evening? A. I didn't see them.

Q. There were other people on the street that evening? A. Yes, sir.

Q. Men and women? A. Yes, sir.

Q. And you don't mean to say there was no other woman around there, do you? A. Yes, sir.

Q. How long a coat did these other two men have on that you saw? A. Came about to the knees.

Q. About to the knees? A. Yes, sir.

Q. How long had you been there when you first saw them? A. About ten minutes.

Q. Looking up the street? A. No, sir; we were looking over.

Q. Over what? A. Over on Hill Street, — we were looking on Hill Street.

Q. Up towards Green Street? A. Yes, sir.

Q. Looking that way all the time? A. Yes, sir.

Q. You didn't see any woman? A. No, sir.

Mr. KNOWLTON. That is all.

FRANK TURTON — *recalled.*

Q. (by Mr. BEER). Your name is Frank Turton? A. Yes, sir.

Q. You have testified here? A. Yes, sir.

Q. What time did you go down the Crittenden road after arriving at Mrs. McCloud's house? A. About quarter of 7.

Q. How far did you go? A. To the fork of the road.

Q. Who was with you? A. Alberta McCloud.

Q. Did you make any calls? A. I did.

Q. How loud were the calls? A. As loud so anybody could hear them.

Q. Did you stand where you could see down the road? A. What road?

Q. Crittenden road. A. No, sir.

Q. Did you state — didn't you state that to me? A. No, sir.

Q. What road could you look down? A. Kendrick's.

Q. Did you look down the Crittenden road? A. Yes, sir; not while I was standing there, though.

Mr. KNOWLTON. I didn't hear that question.

Q. Where were you standing when you were looking down the Crittenden road? A. Round the first curve from Crittenden's house.

Q. How near the spot where the body was found? A. I don't know.

Q. Point out on the map, please, where you came to look down the road? A. [The witness indicates.]

Mr. PARKHURST. Stand one side, so the jury can see where your finger is.

Q. Could you see down the road from there? A. Yes, sir.

Q. All the way down? A. I could see down —

Q. Don't look towards these gentlemen, but look towards the jury. How far down the road could you see? A. I could see as far as where the road began to fall, past that level.

Q. Could you see beyond that? A. No, sir.

Q. Have you stated that you could see down to the bend, the next bend, the lower part of the road? A. No, sir.

Q. Could you see that night down beyond where you have stated? A. No, sir.

Q. Who was with you when you were down round the bend? A. Alberta McCloud.

Q. How long were you and she out there? A. About five minutes.

Q. Do you know the time when you left the house? A. Not positive.

Q. Did you look at any clock or any timepiece before leaving the house? A. No, sir.

Q. Were you down there when a train came in? A. No, sir; not in that spot.

Q. In what spot? A. Where the forks of the road are.

Q. Point out where you were when the train came in? A. [The witness indicates.]

Mr. PARKHURST. That will do for that.

Q. Did you make any outcries there, where you pointed your finger last? A. Yes, sir.

Q. How loud were they? A. Oh, about as loud as I stated before.

Q. How loud were they? A. So anybody could hear them.

Q. How far away? A. I don't know.

Q. Did you shout? A. No, sir.

Q. What did you do? A. Halloed.

Q. Hullo? A. Yes, sir.

Q. To the top of your voice? A. Yes, sir.

Q. How many times did you, while down in the road, either of these roads? A. I don't know.

Q. Have you any idea? A. No, sir.

Q. Did you hear the Boston express train come in? A. Yes, sir.

Q. Were you in either of those roads then? A. Yes, sir.

Q. Were you shouting then? A. I don't remember.

Q. Were you calling all the time while there? A. I had to stop once in a while.

Q. To rest yourself? A. Yes, sir.

Q. Will you point to where you were standing in the Crittenden road? A. Yes, sir.

Q. What interfered with your view looking down the road? A. Why, the gradual descent.

Q. The descent only? A. Yes, sir.

Q. Did you look as far as your eye would reach down that road? A. I should think so.

Q. Can you point out on the map how far your vision reached? A. No, sir.

Cross-examination.

Q. (by Mr. HAMMOND). You and Alberta were going out thinking you would meet Alberta's mamma? A. Yes, sir.

Q. And when you got a little ways, did you make a call, halloo? A. Yes, sir.

Q. And as you were walking along there, do you remember that it was moonlight? A. Yes, sir.

Q. And did Alberta call a little? A. Yes, sir.

Q. You were not either of you frightened at all? A. No, sir.

Q. You were just going along in that pleasant way? A. Yes, sir.

Q. And as you happened to think of it, you would give a little halloo? A. Yes, sir.

Q. And as you walked down to the fork of the roads, you stopped there a little? A. Stopped at the fork of the road.

Q. The fork of the road? And then did you halloo again? A. I hadn't halloed before I got there.

Q. You hallooed when you got to the fork of the road? A. Yes, sir.

Q. And how long did you stop there at the fork of the road? A. I don't know.

Q. Just a minute perhaps? A. Oh, I guess a little more than a minute.

Q. Talking? A. Yes, sir.

Q. Not at all frightened, — you didn't think anything was wrong? A. No, sir.

Q. You were not at all alarmed? A. No, sir.

Q. You didn't see as Alberta was at all alarmed? A. No, sir.

Q. Just out waiting, thinking you would meet Mrs. McCloud pretty quick? A. Yes, sir.

Q. Then how long before you moved a little way round the bend? A. I don't know.

Q. You did walk a little ways round the bend? A. Yes, sir.

Q. Did you call again when you happened to think of it? A. Yes, sir.

Q. Not at all frightened any of the time? A. No, sir.

Q. Just trying pleasantly to call out, so that Mrs. McCloud would know you would meet her? A. Yes, sir.

EDWARD GEARY — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Edward Geary.

Q. Where do you live? A. South Royalston.

Q. Where were you living on Jan. 8, 1897? A. Shelburne Falls.

Q. What was your business? A. Blacksmith.

Q. Where was your place of business located? A. River Street, or Water Street.

Q. Will you turn around and see if you can point it out on the map there? A. There it is, — no, there it is.

Q. Do you find the blacksmith shop there? A. I don't know whether this is it or not, is it?

Q. That is for you to say, and not for me. A. Well, I can't find it there.

Q. Well, how close to the corner is it there, — the corner of Water and Bridge streets? A. It is the second building on that street.

Q. Now, do you remember Saturday morning? A. Yes, sir.

Q. January 9? And you remember hearing of the death of Mrs. McCloud? A. Yes, sir.

Q. Who was the first person who informed you of the death of Mrs. McCloud? A. Jack O'Neil.

Q. And what time was that? A. It was between 9 and 10.

Q. Yes; and where? A. In the blacksmith shop.

Q. Now, who was present in the blacksmith shop when Jack O'Neil came in and informed you of the death of Mrs. McCloud?

A. There wasn't anybody but a man named Joe Guerin and myself.

Q. Now, after Jack O'Neil came into the blacksmith shop there and informed you of the death of Mrs. McCloud, what did you see him do? A. I asked him who Mrs. McCloud was.

Q. What did he say? A. He told me it was Mr. Crittenden's daughter.

Q. Did you request him to do anything? A. Yes, sir.

Q. What did you request him to do? A. I told him to go out on the street and find out more about it.

Q. And what did he do? A. He come back and said, "They say she was murdered."

Q. How long was he gone when he came back? A. Oh, he might have been gone five or six minutes.

Q. Did you see him again that day? A. I saw him about 5 o'clock go by the shop.

Q. You remember seeing him in front of your shop when John Couard was in your shop? A. No, sir.

Q. Do you remember seeing him around your shop when Dubsey Woodward came into your shop? A. No, sir.

Q. Do you remember an incident of Dubsey Woodward's changing some money in your shop? A. Yes, sir.

Q. Was O'Neil present when that was done? A. No, sir.

Q. Was he in sight? A. I didn't see him.

Q. Was that money changed in your shop after the second time that you had seen O'Neil that day? A. Yes, sir.

Q. So that O'Neil had been in your shop first? A. Yes, sir.

Q. And told you about the body being found? Then you sent him out? A. Yes, sir.

Q. And he came back and reported to you? A. Yes, sir.

Q. And after that the money was changed in your shop? A. Yes, sir.

Q. How did he appear when he was in there? A. I didn't see that he looked any different from what he ever did.

Q. After he came back the second time and reported they said she was murdered, what did he say? A. He said, "By God, what is this town coming to?" He stood a few minutes, and walked out.

Cross-examination.

Q. (by Mr. KNOWLTON). What time was the bill changed? A. It was 10 o'clock, or a little after.

Q. That was not the first time you had seen him? A. No, sir.

Q. Haven't you said so? A. No, sir.

Q. Did you testify before the inquest? A. I was not to the inquest, only up to the Falls.

Q. I mean up to the Falls. A. They didn't ask me anything about it.

Q. Didn't they? Didn't they ask you if you saw him in the morning and had any talk with him, and you said you did not? A. No, sir.

Q. You remember that? Didn't say anything about this, did you? A. They didn't ask me about it.

Q. Didn't ask you if you saw him in the morning? A. No, sir.

Q. Didn't ask that question? A. No, sir; just asked about the money.

Q. Didn't they ask you if John O'Neil was in your place on the morning of Saturday, January 9? A. I don't think they did.

Q. Didn't they ask you if you had any talk with him, and you said you did not? A. No, sir.

Q. You didn't say anything about this, did you? A. I don't think I did.

Q. This is the first time you have told this under oath, isn't it? A. Yes, sir.

THOMAS O'NEIL — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Thomas O'Neil.

Q. Where do you live? A. Shelburne Falls, Mass., Buckland side.

Q. On what street? A. Green Street.

Q. You live at the house where John O'Neil resided prior to his arrest? A. Yes, sir.

Q. Where are you at work? A. H. H. Mayhew & Co., Shelburne Falls.

Q. Where were you at work on Friday, Jan. 8, 1897? A. H. H. Mayhew & Co's.

Q. Same place? A. Yes, sir.

Q. Now, what time did you finish your work that night? A. Six o'clock.

Q. Six o'clock. After you finished your work, what did you do, if anything? A. Washed myself and went home.

Q. Well, now, will you kindly point out on the map, turn around here, and look at the map, Mr. O'Neil, and point out on the map, as near as you can, where H. H. Mayhew & Co.'s place of business is?

A. Down in here somewhere.

Q. Down in there back of the post-office? A. Down below the bank; yes, sir.

Q. Down below the bank next to the post-office, next to the river?
A. Yes, sir.

Q. Is there a path or road that leads up to the street there? A. There is a path that leads up by Haller's pool room, up to the barber shop.

Q. There is a road that goes up there? A. No, sir; there isn't any road; you go up to the post-office and around the path.

Q. Go up across and down by the post-office by a path? A. Yes, sir.

Q. Now, what did you do after you got through work that evening? A. I washed myself and went home.

Q. Now, what route did you follow in going home? A. Come up on Bridge Street across the bridge, and went on the Buckland side and went up Clement Street.

Q. Now, just tell it all over again, good and loud, so that every man on the jury can hear you; they are the men who want to hear you. A. Went across Bridge Street and across the bridge and went on the Buckland side and went up Clement Street.

Q. Crossed the bridge on the Buckland side and went up Clement Street? A. Yes, sir.

Q. And how did you get from Clement Street over to your house?
A. A little cross street.

Q. Went to the cross street? Now, there are two cross streets there. Can you tell which one, the upper one or the lower one? A. The upper one.

Q. What is that called, do you know? A. I do not.

Q. Can you find it on the map there? Now, I will point out Clement Street, to facilitate matters, and now you find any street you crossed there? A. Right there.

Q. Right there, that street there, Prospect Street? A. Yes, sir.

Q. Now, how long did it take you, to your best judgment, to go from your place of business where you were employed to your home that night? A. Fifteen minutes.

Q. About fifteen minutes? A. Yes, sir.

Q. And what did you do after you got home? A. Sat down and ate my supper.

Q. Now, when you came into the house, by which door did you enter? A. The front door.

Q. And what room did you go into after you got into the front hall? A. Dining room.

Q. And whom did you see in the dining room, if anybody? A. Don't remember.

Q. Well, whom did you eat supper with, if any one? A. My brother John and my sister Roe.

Q. Any one else? A. I think not.

Q. Your brother John and sister Rose? A. Yes, sir.

Q. And when you got in was he in the dining room? A. I don't remember whether he was in the dining room; he was in.

Q. Could you get a view of the kitchen from the dining room? A. I could get a view of part of it.

Q. Did you see him in the kitchen anywhere? A. I didn't see him at all; I went to eat my supper.

Q. You don't remember seeing him at all? A. No, sir.

Q. Well, you three sat at the table together, Rose and John and you? A. Yes, sir.

Q. Well, how long did it take you to eat your supper? A. About fifteen or twenty minutes.

Q. Well, after you got through eating your supper, what did you do, if anything? A. Put on my hat and coat and went down to the barber shop.

Q. You went down to the barber shop? A. Yes.

Q. What did you have done at the barber shop, if anything? A. Had my hair cut.

Q. Did you have to wait any length of time before you got into the barber's chair after you got there? A. A few minutes.

Q. After you got through getting your hair cut, what did you then do? A. I got out and went up Bridge Street.

Q. When you came out of the barber shop door, do you remember anything that you heard or saw that attracted your attention to the time that it was? A. Yes, sir.

Q. What? State it so the jury can hear. A. The mail train at 7.17.

Q. When you came out of the barber shop door, what did you hear, if anything? A. I heard the mail train.

Q. Now, after you heard the mail train, where did you then go? A. Went up Bridge Street.

Q. Could you tell what time the mail train was due there at the Shelburne Falls depot? A. 7.17.

Q. So when you came out from the barber shop door, you heard the mail train coming into the depot? A. Yes, sir.

Q. Now, when you came out of the barber shop door, and heard the mail train come into the depot, where did you then go? A. I went up to Mrs. Koonz' millinery shop, and met George Atkins coming back.

Q. Now, where is Mrs. Koonz' millinery shop? Turn around and show the jury just where it is. A. Right across there [indicating].

Q. It isn't up to the post-office? A. No, sir; right across from the hotel.

Q. It is right across from the hotel? A. Yes, sir.

Q. Now, will you point out to the jury where you came out of the barber shop? A. [Does so.]

Q. Now, there is the bridge, — start in with the bridge; there is the bridge across there. Now start in with the bridge, and find the barber shop. A. The barber shop is in Joel Thayer's building.

Q. Which side, next to the electric track? A. Yes, sir.

Q. And you came out there? A. Yes, sir.

Q. And you walked from there back?

Mr. HAMMOND. Let him point it out himself.

Mr. DOWLIN. He has already designated.

Mr. HAMMOND. Well, you had better let him go on himself.

Q. (by Mr. DOWLIN). How long would it take you to walk from the barber shop to where you met George Atkins? A. Two or three minutes.

Q. Now, did you meet George Atkins alone? A. Yes, sir.

Q. Now, what did you do in consequence of meeting George Atkins? A. He asked me first for a cigarette, and I gave him one, and turned round and came back.

Q. On which side of the street did you and George Atkins walk back toward the barber shop? A. On the south side.

Q. That is, on the same side of the street? A. Yes, sir.

Q. That you met him on? A. Yes, sir.

Q. And, in walking back on the south side of the street, did you meet anybody else on that side of the street that you remember, that you had any conversation with? A. None till I got to the bridge.

Q. Now, after you walked down the street, where did you then go? A. Across the bridge.

Q. And on which side did you cross the bridge, on the north or south side? A. On the south side.

Q. Now, point out on the map just the way you walked. A. [Does so.]

Q. Point out on the map just which way you walked down that street to the bridge. A. On that side of the street here, the south side, I should call it.

Q. Along on the south side of the street? A. Yes, sir.

Q. Now, you crossed the bridge? A. Yes, sir.

Q. How far on that side of the street did you go? A. Till I met my brother Eddie, and turned round and asked him where he was going.

Q. You passed down the street? A. Yes, sir.

Q. And in passing down the street did you cross the bridge, did I understand you to say? A. Yes, sir.

Q. Now, in your course down the street and across the bridge did you meet anybody? A. Yes, sir.

Q. If so, state whom you met first. A. Met my brother Eddie at the end of the bridge on the Shelburne side, and told him to come round, — turn round and go with me; and he did.

Q. Your brother Eddie? A. Yes, sir; and I went a little further. and met my brother John.

Q. Now, hold on. Which way was your brother Eddie coming from? A. Coming from the Buckland side.

Q. Was he alone? A. No, sir.

Q. Whom was he with? A. I think he was with a boy by the name of George Sommers.

Q. How old is your brother Eddie? A. Fourteen, I think.

Q. And in consequence of what you said to your brother, did he turn around and go with you and George Atkins? A. Yes, sir.

Mr. HAMMOND. Allow me to interrupt you here; we didn't get the name of that boy who was said to be with Eddie.

THE WITNESS. George Sommers.

Mr. DOWLIN. He said he thought George Sommers was with him.

Q. And did you meet anybody else on your way? A. Yes, sir.

Q. If so, state who and where. A. Met my brother Johnnie and Den Kendrick at the end of the bridge nearest the Buckland side.

Q. At the end of the bridge near the Buckland side? A. Not right on the end of the bridge, between the first link of the bridge.

Q. The first span of the bridge? A. Yes, sir.

Q. Did you speak to him? A. No, sir.

Q. How close were you to your brother John? A. Well, I went right by him.

Q. You went right by him? A. There wasn't any more than room for two or three to pass on the bridge.

Q. Are you sure it was he? A. Yes, sir.

Q. Did you notice if Den Kendrick — that was the person I understood you to say was with him? A. Yes, sir.

Q. Did you notice if Den Kendrick was carrying anything in his hand? A. Yes, sir; I thought he was carrying two milk cans.

Q. While you were passing your brother, and in your brother's hearing, did you hear any conversation, or any one speak? A. Yes, sir; I heard my brother speak about anchor ice.

Adjourned to Monday, July 26, 1897, at 9 A.M.

SEVENTH DAY.

JULY 26, 1897.

The roll of the jury was called, and the prisoner answered to his name.

THOMAS O'NEIL — *direct examination resumed.*

Q. (by Mr. DOWLIN). What time did you say it was when you reached March's barber shop? A. The train was just puffing in; I couldn't tell you just the time; about fifteen minutes afterwards.

Q. And after you left March's barber shop where do you say you went? A. Went up Bridge Street to Mrs. Koonz's millinery store.

Q. Whom did you meet there? A. George Atkins.

Q. Where did you go after that? A. Turned round and came down Bridge Street again.

Q. And where was it you said you met your brother? A. On the bridge.

Q. Could you tell what time it was when you met your brother on the bridge? A. About twenty minutes after 7.

Q. How would you fix that time? A. The time the train went out.

Q. Did you hear or see anything that would cause you to fix definitely the time in your mind? A. Yes, sir.

Q. What was it? A. The train.

Q. Where did you see the train? A. Coming across the iron bridge.

Q. Where is the iron bridge located? A. It crosses Clement Street.

Q. The iron bridge that crosses Clement Street? A. Yes, sir.

Q. And where did you then go? A. Went across the street, and over behind Amstein's store, and got a box.

Q. Who was with you then? A. George Atkins and my brother Eddie.

Q. Where did you go after you went behind Amstein's store? A. Went up to the hut.

Q. Where was the hut? Can you turn to the map and point it out? A. Up in there somewhere [showing].

Q. Where your finger is? A. Yes, sir.

Q. About how long would it take you to walk from Amstein's store up to the hut? A. About five minutes.

Q. How long did you remain in the hut? A. Till 9 o'clock.

Q. What did you first do after you got into the hut? A. I broke up the box and built a fire.

Q. What did you do then? A. Sat down, and the boys begin to joke about my hair cut.

Q. What did you do after that? A. Played cards.

Q. Now, while you were playing cards, could you tell what time it was then, while you were playing cards, just after you commenced playing cards? A. About 8 o'clock.

Q. How do you know? A. I heard the town clock strike.

Q. How long had you been in the hut before you heard the town clock strike? A. Half an hour.

Q. How do you know it was 9 o'clock when you left the hut? A. The cutlery bell rang.

Q. Is that a bell that rings at 9 o'clock every night? A. Yes, sir.

Q. And where did you go after you left the hut? A. Put on my coat and went home.

Q. Did you see anything of your brother again that night? A. No, sir.

Q. Did you see anything of him the next morning? A. Yes, sir.

Q. Whereabouts? A. In bed.

Q. Did he sleep with you? A. Yes, sir.

Q. You don't know when he came to bed? A. No, sir.

Q. I understood that you ate supper with your brother that night. A. Yes, sir.

Q. Now, while you were eating supper, or while you were in there, was there anything about your brother's condition that attracted your attention? A. No, sir.

Q. That is all.

Cross-examination.

Q. (by Mr. HAMMOND). You have lived at home all the time since you can remember? A. Yes, sir.

Q. Can you turn to the map and point your finger to your mother's house, or father's house? A. [Witness indicates.]

Q. Now, can you point your finger from that point along the Crittenden road to the place where the body was found? Run along the Crittenden road. A. There [indicating].

Q. Can you run your finger along the way you go when you go up that road from your house? A. Well, you can go two or three different ways.

Q. Won't you put your finger on the way you used to go? A. Go up over the ledge here, and over the road this way.

Q. Have you been up there some time? A. Yes, sir.

Q. What have you been up there for? A. Carrying washings.

Q. Have you been into those woods some time? A. Yes, sir.

- Q. What have you been there for? A. Gathering leaves.
- Q. And where have you gathered leaves? A. All around the woods there.
- Q. Have you been in about the place where the body was found? A. Yes, sir.
- Q. And what have you been in there for? A. Went up there to see where the body was found after the murder.
- Q. Before that, had you been accustomed to go about there? A. Yes, sir.
- Q. What was that for? A. Gathering leaves.
- Q. What did you do with the leaves? Just for play? A. Bedded the pigs with them.
- Q. How frequently had you been where the wall is broken? A. Oh, I went in there quite a number of times.
- Q. Boys go in there pretty often? A. Yes, sir.
- Q. Place where children play among the big trees, and around the brook? A. Yes, sir.
- Q. Were you accustomed to go in there and play when you were younger? A. Yes, sir.
- Q. Children accustomed to go in there a good deal all summer long? A. I don't know whether they had been in there this summer.
- Q. Had they been before? A. Yes, sir.
- Q. Were they accustomed to go in where the wall was broken and play around in the woods? A. Went in through the path there.
- Q. Whereabouts did the path go in from the road? Where the wall was broken down? A. There is one path there; there are three or four paths up there used to go in.
- Q. And were there some large trees near the place where the body lay? A. Yes, sir.
- Q. And are they pretty near to the brook? A. Yes, sir.
- Q. And about there did the children use to play before this year? A. Yes, sir.
- Q. A good many of them? A. Yes, sir.
- Q. What time did you yourself go up there to see where the body lay? A. The next Sunday afterwards.
- Q. Any one go with you? A. Yes, sir.
- Q. State who? A. I don't remember just who; there was quite a crowd.
- Q. Any of your family? A. My brother.
- Q. Which brother? A. Eddie.
- Q. Any other? A. My brother Joseph.
- Q. Go on. Any others of your family? A. No, sir.
- Q. Did any of the others go at any other time? A. I think they did.

Q. Do you know what time? A. No, sir.

Q. Did you know when your father and mother started away to go up there? A. No, sir; I don't.

Q. Did you know that they did go some time? A. Yes, sir.

Q. Did you know whether your sisters went up some time? A. I couldn't say.

Q. Did you know anything about John's going up? A. No, sir.

Q. When did you first hear that Mrs. McCloud was dead? A. Saturday, about 11 o'clock.

Q. What time did you have to leave home Saturday morning? A. Quarter to 7.

Q. Had John gotten up at that time? A. No, sir.

Q. Did you talk with John any that morning? A. No, sir.

Q. When did you first talk with John? A. Sunday morning, I think.

Q. How? A. Not till Sunday, I think.

Q. Did he ever tell you the story about the hoboes? A. No, sir.

Q. Did you ever hear him say anything about the man on the steps Friday night? A. Yes, sir.

Q. What did you hear him say about that? A. He said there was a man on the steps, and he came up and he grabbed the man by the coat to pull himself up there, and he got slung back again.

Q. I can't hear you. A. And the man flung him back again, — back; and the man run away.

Q. Did he say anything about the man getting his money? A. No, sir.

Q. Did he say anything about what the man had done? A. Not in my presence.

Q. Did he tell you he thought the man killed Mrs. McCloud? A. No, sir.

Q. When did he tell you this? A. He was telling it to my folks, Saturday, I think it was.

Q. What time Saturday? A. Saturday night, I think.

Q. After he came home sick? A. Yes, sir.

Q. To whom was he telling it? A. To my mother.

Q. And any of the others in there? A. Yes, sir.

Q. What ones? A. All my sisters, and mother.

Q. Name your sisters who were in there, and heard him tell about the man on the steps. A. My sister Rose — I don't believe all my sisters were there, though.

Q. Well, name the ones who did hear it. You said Rose? A. Yes, sir.

Q. Any other? A. I can't remember any other.

Q. Your mother? A. Yes, sir.

Q. Was your father there? A. No, sir.

Q. Eddie there? A. I think he was.

Q. Was the doctor there? A. He came up in a little while.

Q. He wasn't there till later? A. Or, rather, he had went away before I come; I don't just remember.

Q. Was the priest there? A. Not while I was there.

Q. Did you see him there at all? A. No, sir.

Q. Have you told all that John stated about the man on the steps Friday night? A. Yes, sir; all I can remember of.

Q. Did John tell you what time he got home? A. He didn't tell me; I think I heard my folks say he got home —

Q. No; did you hear him tell your folks what time he got home? A. No, sir.

Q. Did you hear John talking about anything else Saturday night? A. No, sir.

Q. Did you hear him telling your mother where the money came from? A. No, sir.

Q. Did you hear him telling any of your people where the money came from? A. I don't think I did.

Q. Didn't you hear him say that the five dollars came from Billy Noonan? A. I heard my folks pass that remark; I didn't hear him say it.

Q. Didn't you hear John say that the ball players helped him out? A. I didn't hear him say it; I heard my folks say so.

Q. Do you know what time the priest came there? A. No, sir.

Q. Did you talk with him any more, or hear others talk with him any more? A. No, sir; I went to bed.

Q. Did you talk with him on Monday? A. I didn't talk with him in particular; no, sir.

Q. What kind of an overcoat did John wear last winter? A. Black ulster.

Q. Do you know whether it is the same one he wore away when he went to jail? A. Yes, sir.

Q. Did he have any other long overcoat except that one which he wore when he was taken away by the officers? A. No, sir.

Q. When you met your brother down by the bridge on Friday night, which way was he from selectman Kendrick? A. Just ahead of him; just stepped out of the way, I think, so other people could pass.

Q. How? A. I think he just stepped out of the way so other people could pass, getting out of the way of Kendrick.

Q. Were they moving, or was John standing looking over the rail? A. They were walking.

Q. What did Mr. Kendrick have in his hand, did you see? A. Milk cans.

Q. How many? A. I thought there was two.

Q. How big were they? A. About quart cans, or two quarts.

Q. They were small cans. A. Yes, sir.

Q. What did Mr. Kendrick have on for an outside coat? A. I think he had on his reefer.

Q. At that time he usually wore a reefer, did he? A. I don't know as he wore it all the time; I have seen him with his overcoat on.

Q. You knew he carried milk to some customers? A. Yes, sir.

Q. Have you seen him at other times? A. Yes, sir.

Q. Did you say anything to John? A. No, sir.

Q. Anything to Mr. Kendrick? A. No, sir.

Q. They were nearer the Buckland side than the other? A. Yes, sir.

Q. And pretty near to the Buckland end? A. Well, they was in the middle of the first span of the bridge.

Q. And there were two boys with you? A. Yes, sir.

Q. Your brother Eddie and — A. George Atkins.

Q. Where did you pick Eddie up? A. Shelburne side of the bridge.

Q. What? A. Over on the Shelburne side of bridge.

Q. Were any of you smoking cigarettes? A. Yes, sir.

Q. Which ones? A. Me and George Atkins.

Q. Was it the first cigarette, or the second? A. The third or fourth for me that night.

Q. Well, how was it with Atkins since you met him? A. The second one, I think.

Q. He was smoking his second cigarette, and you furnished them? A. Yes, sir.

Q. You furnished him two cigarettes? A. I didn't furnish him two right there.

Q. And you met Atkins where? A. Up by Mrs. Koonz' milliner shop.

Q. Can you turn round and point on the map about where that is? Step back so I can see and so the jurymen can see, and then point.

A. Right about here.

Q. And you and George Atkins had been going along from there smoking? A. Yes, sir.

Q. And talking? A. Yes, sir.

Q. Did you meet anybody as you smoked and talked going from the milliner shop along towards the bridge? A. Probably met a good many; I don't remember who they were.

Q. Did you say hello to the boys when you met them? A. I don't remember.

Q. You were sauntering along there, having a good time? A. Yes, sir.

Q. And you met Atkins right there along by the millinery shop?
A. Yes, sir.

Q. Now, step back, please, and point where you had been before you reached the millinery shop. A. Been in the barber shop.

Q. And the barber shop is which side of the street railroad? A. Left-hand side.

Q. Well, point to the barber shop. A. Right there.

Q. It is on the west side of the street railroad, is it? A. Yes, sir.

Q. Well, is Friday night about as busy a night as Saturday night in that barber shop? A. No, sir.

Q. How many barbers are there in there? A. Three.

Q. How many were there waiting when you went in? A. There was nobody only the man in the chair; one of the barbers had gone home to supper.

Q. There were two barbers, or only one, in there, when you went in there? A. There was two, I think.

Q. What were the names of the barbers? A. Johnnie March and Adolph Schempp.

Q. Do you know them? A. Yes, sir.

Q. Did you wait till one man got his hair cut? A. No, sir.

Q. Did you wait till one man got through with what he had to have done in the chair? A. Yes, sir.

Q. Do you know who that man was? A. I do not.

Q. Did you have any money to pay for your hair cut? A. No, sir.

Q. Did you get it charged? A. Yes, sir.

Q. Did you know the man? A. Yes, sir.

Q. When did you ask him to charge it, before or after you had the job done? A. When I was about half done.

Q. Did you have anything else done besides a hair cut? A. No, sir.

Q. How much was the charge for it? A. Twenty-five cents.

Q. Before you were in the barber shop, step back and point out your course, where had you been before that? A. Came from my home.

Q. Yes. A. Down this street here, and crossed over the railroad track, and down this way here, crossed over the bridge.

Q. Did you come with anybody? A. No, sir.

Q. Did you see anybody whom you knew on the way down? A. I don't remember.

Q. There were people on the street? A. Yes, sir.

Q. You don't happen to remember any of them? A. No, sir.

Q. Before you left home did you have a talk with your mother about where you were going? A. Yes, sir.

Q. Did you talk with her about whether there was any money to pay for a hair cut? A. Yes, sir.

Q. What was that talk? A. I asked her if she —

Mr. PARKHURST. Wait a minute.

Mr. HAMMOND. I don't care about it.

SHELDON, J. Well, it is not pressed.

Q. What time did John sit down to supper? A. I don't know just the time.

Q. Who came first, you or John? A. John.

Q. What time did you get in? A. About quarter after 6, may be a little after.

Q. What time did Rose get in? A. I don't know.

Q. How much after quarter past do you think it was that you got there? You said it might be a little after. A. It wasn't over a minute or two.

Q. Was Rose there when you got there? A. I think she was.

Q. What did you three do? A. Set down and ate supper.

Q. What did you have for supper? A. Had some baked beans for supper.

Q. About what time did John and Rose and yourself sit down to supper? A. I can't state just the time.

Q. Did you go and wash up first? A. I washed up before I came home, down in the shop.

Q. Did Rose go anywhere, or was she right in the room with you?

A. Right in the room with me when I ate my supper.

Q. Did she have to go up stairs to lay off her things? A. No, sir.

Q. Did any others sit down with you and Rose and John? A. No, sir.

Q. Did John talk with you any? A. I don't remember of hearing him talk to me.

Q. Was John drunk, or sober? A. He had a little jag on.

Q. Well, what was his condition? A. I don't know what you call it.

Q. Did he eat his supper properly? A. Yes, sir.

Q. Behave well at the table? A. Yes, sir.

Q. Behave politely to Rose and your brother? A. Yes, sir.

Q. Nothing strange about him? A. No, sir.

Q. Nothing more than that you saw he had been drinking a little?

A. That is all.

Q. How long did you sit there at the supper table? A. About fifteen minutes.

Q. Who went out first? A. I did.

Q. What? A. I did.

Q. You think you went out first? A. Yes, sir.

Q. Have you stated any different at any other time? A. Not that I remember of.

Q. Did I ask you questions in the town hall in Buckland, at what was called the first inquest? A. Yes, sir.

Q. Did I ask you who went out first after supper? A. I don't remember.

Q. Didn't you say that your brother John went out first? A. I think not.

Q. Think of it, and see whether you didn't have the question asked you, "Who went out first that night after supper?" and didn't you answer, "My brother John"? A. I don't remember.

Q. Well, isn't it true that John did go out first? A. I think I went out first.

Q. Didn't you see John put on his ulster? A. I think I did.

Q. What? A. I think I did.

Q. And didn't you see him light his pipe? A. No, sir.

Q. Didn't you see him put on his hat? A. I see him put on his ulster and hat and went out towards the kitchen.

Q. You saw him put on his ulster and cap and went out where? A. Towards the kitchen; that is, when I was going out the door.

Q. Did you know of John's having any money on Friday, before supper? A. No, sir.

Q. Did you know that he was out of money? A. I did not.

Q. Did you know that he was out of work? A. I did.

Q. Haven't you said that he didn't have any? A. I thought he didn't have any.

Q. And haven't you said you thought he didn't have any because he hadn't had any work for a long time? A. Yes, sir.

Q. Did you know where any part of the \$15 came from which he had later that night? A. No, sir.

Q. Did any of the family have it, to your knowledge? A. I don't remember.

Q. Did you know anything about it, whether any of the family had the \$15 which he had later in the evening? A. No, sir.

Q. Did you know anything about where that \$15 came from? A. No, sir.

Q. Did you know of any claim, except as you have stated, that Willie Noonan gave it to him? A. No, sir.

Q. Did John ever claim that he got it in mistaken change at the Woodward Hotel? A. No, sir.

Q. Did he ever talk about it to you? A. No, sir.

Q. Did he ever tell you in any way where the \$15 came from? A. No, sir.

Q. Did you ever find out where it came from? A. No, sir.

Re-direct Examination.

Q. (by Mr. PARKHURST). Won't you kindly tell us the usual route you took to go from your home down to the Shelburne Falls side of the village? A. Down Green Street, across the railroad track, down State Street, and go across the bridge [tracing on the map].

DENNIS O'BRIEN — *recalled.*

Q. (by Mr. DOWLIN). Your name? A. Dennis O'Brien.

Q. You have been on the witness stand before, Mr. O'Brien? A. Yes, sir.

Q. Will you state, to the best of your knowledge, what time it was that John O'Neil — or, did John O'Neil leave you on Friday evening after you met him? A. January 8?

Q. January 8. A. I should think it was between ten minutes and quarter past 6 in the evening.

Q. Where were you standing when he left you? A. I was standing between Ward's corner and the barn that leads up the railroad track.

Q. Who was with you when he left you? A. James Wood.

Q. You were standing on Clement Street? A. Yes, sir.

Q. When did you first stop at the place where you were standing on Clement Street? A. A few minutes before 6 o'clock.

Q. Were you in a position where you could see who passed up the side walk on Clement Street? A. I stood with my back towards the railroad track, and looked down towards what they call State Street.

Q. Could you see who passed up Clement Street, if they went by you? A. Yes, sir.

Q. Are you acquainted with Mrs. McCloud? A. I know the lady; I know her.

Q. Were you acquainted with her? A. Yes, sir; not to speak to her.

Q. Did you know her by sight? A. Yes, sir.

Q. Did you see her that night while you were standing there? A. No, sir.

Q. After O'Neil left you, where did you go? A. I went home; a few minutes after he left me, I went home.

Q. Did you see anything of Mrs. McCloud on your way home? A. No, sir.

Q. Will you tell me where you live? A. I live right on top of the hill, right straight up; I don't know what they do call the street; never heard it called.

Q. Right straight up which way? A. Straight up Clement Street, under the bridge; one of those large houses on top of the hill.

Q. On Hill Street? A. I suppose so.

Q. The back of your house comes to Union Street, does it? Will you turn around and find your house on the map, and show the jury just where it is? A. Here it is [indicating].

Q. Right there. Now, how long did you say it was after O'Neil left you before you started home? A. Only two or three minutes; probably two minutes.

Q. On your way home did you see anything of Mrs. McCloud? A. No, sir; I didn't see Mrs. McCloud at all; I don't know when I did see her last.

Q. What time did you leave your home to go down town again? A. The next morning, about a quarter to 7.

Q. And was O'Neil under the influence of liquor when he left you Friday night? A. Yes, sir.

Q. Are you acquainted with the location where Mrs. McCloud's body was found? A. Well, I never paid much attention to it; I never have been up there a great deal, anyway.

[Cross-examination waived.]

JOHN RYAN—*sworn*.

Q. (by Mr. DOWLIN). What is your name? A. John Ryan.

Q. What is your age? A. Fifteen the 17th of next month.

Q. Where do you live? A. The fourth house on Green Street.

Q. In what town? A. In the town of Buckland.

Q. Will you turn round to the map and find the house and show the jury where it is, or the location, about where the house would be?

A. [Shows.]

Q. About there? A. Yes, sir.

Q. Do you remember the night, the Friday night, January 8, the night before Mrs. McCloud's body was found? A. Yes, sir.

Q. Where did you have supper that night? A. At home.

Q. What time did you finish your supper? A. Six o'clock.

Q. How do you know? A. Because the clock struck 6.

Q. If you did anything after you finished your supper, you may state that? A. I read one of my school books about twenty-five minutes.

Q. Where did you go after you ate your supper, if anywhere? A. I walked to the post-office and returned.

Q. Will you trace the road on the map you took from your house to the post-office and return? State in words.

Mr. PARKHURST. Turn this side, so the jury can see it.

Mr. DOWLIN. Just state in words the streets you followed.

Mr. PARKHURST. Speak up loud.

A. I went down Green Street, — I can't find out from this map very well.

Q. (by Mr. DOWLIN). You went down Green Street? A. Yes, sir; down Depot Hill to Ward's store, Odd Fellows Hall, on to State Street, and over the bridge, and up to the post-office, and took the same route home.

Q. You went down Green Street, and what did you say you crossed? A. Went down Depot Hill and crossed the bridge.

Q. Yes, Depot Hill. Ashfield Street? A. Yes, sir.

Q. Went down Green Street, across the railroad track? A. Yes, sir.

Q. And down Ashfield Street? A. Yes, sir.

Q. And across the bridge? A. Yes, sir.

Q. To the post-office? A. Yes, sir.

Q. How long did you stay at the post-office? A. I just went in and looked at my mail box and came out.

Q. Where did you go after you left the post-office? A. Started towards home.

Q. By what route? A. The same route.

Q. And did you cross the railroad crossing at Ashfield Street? A. I did.

Q. Up Green Street? A. I did.

Q. Did you meet anybody between the railroad crossing and your home? A. I did.

Q. Who? A. John O'Neil.

Q. And at what time would you put that? A. Between twenty minutes and a quarter of 7.

Q. How do you know that you met O'Neil? A. Because I have known the man as long as I can remember.

Q. How long have you known John O'Neil? A. As long as I was large enough to know anything.

Q. If any conversation passed between you, state just what it was. [Objected to.]

SHELDON, J. Well, he may state the fact that there was conversation.

Q. (by Mr. DOWLIN). Was there any conversation between you and O'Neil? A. Yes, sir.

Q. State what it was. A. He says, "Hello, Jack;" and I replied, "Hello, Jack." [Objected to.]

SHELDON, J. That is not competent.

Mr. PARKHURST. The fact of the conversation is all that we care to show, your Honor.

Q. (by Mr. DOWLIN). How long were you conversing together? A. It was a very, very short time.

Q. By reason of this conversation, what, if anything, did you do?
A. I simply gave him a few matches.

Q. Did you see him do anything with the matches? A. I did; I saw him scratch the matches on his thigh, to light his pipe.

Q. And did you notice which way he went? A. He went over the crossing down Depot Hill.

Q. You saw him go over the crossing down Depot Hill, is that it?
A. I did; yes, sir.

Q. And how do you place the time between twenty minutes of 7 and quarter of 7? A. Because it takes from ten to fifteen minutes to walk from my home to the post-office and back.

Q. Have you ever timed yourself? A. I have.

Q. Where did you go after you met O'Neil on Green Street? A. I went down around Green Street, on that — there is a branch there; I can't tell the name of the street.

Q. Where did you go from Green Street, — to what other street?
A. Clement Street.

Q. And did you go over some street that leads from Green Street to Clement Street? A. Yes, sir.

Q. Was it the first or second cross street that you come to? A. The first.

Q. Will you turn around and try to find it on the map there? A. [Witness indicates.]

Q. Now, after you reached that point where your finger is, where did you then go? A. Down to the Odd Fellows Hall corner.

Q. And did you meet anybody there? A. No, sir.

Q. Where did you go then? A. I crossed the bridge, and on the other side of the bridge I stood a few moments; I stood a few minutes, and about quarter past 7 I met two friends, James Kennedy and Reuben Fenton.

Q. Where did you meet James Kennedy and Reuben Fenton? A. Just the other side of the bridge.

Q. Did you go anywhere with James Kennedy and Reuben Fenton? A. I did.

Q. Where? A. To the post-office.

Q. How long did you three remain at the post-office? A. Until about twenty-five minutes of 8.

Q. And where did you go after you left the post-office? A. To Johnny March's barber shop.

Q. How do you know it was about twenty-five minutes of 8 at the post-office? A. Because the first bell for the distributing of the mail was rung.

Mr. PARKHURST. I didn't catch that answer.

THE WITNESS. Because the first bell in the post-office was rung for the mail.

Q. Is there a bell there that is rung after the mail is ready to distribute? A. Yes, sir.

Q. And where did you go then, did you say? A. To Johnny March's barber shop.

Q. Now, will you point out on the map the post-office and where March's barber shop is? A. The post-office is here [indicates], and about there is the barber shop.

Q. Now, how long did it take you to walk from the post-office to the barber shop? A. Two or three minutes.

Q. If you did anything after you got to the barber shop — A. We waited around there a few moments.

Q. After you reached the barber shop, did you see anything of John O'Neil again? A. Yes, sir.

Q. Where? A. He came up to us and he asked us for a cigarette.

Q. Well, I didn't ask for that. By any reason of any conversation you had with John O'Neil, did you do anything? A. No, sir.

Q. Did you give him anything? A. At the barber shop?

Q. Yes. A. No, sir.

Q. Did you have any cigarettes? A. No, sir.

Q. And what time would you place that? A. Between twenty minutes and a quarter of 8.

Q. And who did you say were with you? A. James Kennedy and Reuben Fenton.

Q. And what did you do afterwards? A. Went to a place we call the hut, — a club room of ours.

Q. Did Reuben Fenton and James Kennedy go with you? A. No, sir.

Q. What direction did they take? A. Towards Haller's pool room.

Q. Do you know of your own knowledge what time you parted company there? A. Yes, sir.

Q. What time was it? A. Five minutes of 8.

Q. How do you know? A. Looked at the clock in Johnny March's barber shop.

Q. And how long after you saw O'Neil was it before you parted company? A. About ten minutes.

Q. And where did you see O'Neil go? A. He walked up the street.

Q. Which direction? A. He walked up that way [indicating up Bridge Street].

Q. Walked up that way? A. Yes, sir; that is, towards Joyce's shoe store.

Q. And if you saw O'Neil again that night? A. I did not.

Q. When you had the conversation with O'Neil in front of the barber shop, did he have the appearance of having been drinking? A. Yes, sir.

Q. When you had the conversation with him on Green Street, did he have the appearance of having been drinking? A. Well, somewhat.

Q. When you had the conversation with him in front of the barber shop, did he have the appearance of having been drinking any more than when you saw him on Green Street? A. Yes, sir.

Mr. KNOWLTON. Wait a moment. I pray your Honors' judgment on that.

SHELDON, J. The question is objectionable in form.

Mr. KNOWLTON. That is the objection I make to it.

Q. What was his condition when you saw him on Green Street? A. Fair condition.

Q. Under the influence of liquor? A. Somewhat.

Q. What was his condition when you saw him in front of March's barber shop? A. Well, more bad — worse.

Q. What do you mean by worse? A. Well, he looked as though he had been drinking more.

Q. And did you see anything of O'Neil again that night, did I understand? A. No, sir.

Q. Did you see anything of O'Neil Saturday? A. I don't remember.

Mr. DOWLIN. That is all.

Cross-examination.

Q. (by Mr. HAMMOND). Whereabouts was the boys' club room which you called the hut? A. At Atkins's.

Q. What was this room? A. It was a small place that a few of us boys met at.

Q. How was it constructed? A. Why, it was a very small building, about room enough for eleven, with nothing but a stove and a bench and a few chairs in it.

Q. Anybody there when you reached that hut on Friday night? A. There were.

Q. Who was there? A. Thomas O'Neil and George Atkins.

Q. Anybody else? A. Not that I remember of.

Q. How long did you remain at the hut? A. Until somewhat after 9 o'clock.

Q. Have any stock of firewood there? A. The fire had been started before I —

Q. Was there any stock of firewood there to keep the room comfortable? A. I didn't notice.

Q. Was there any firewood there excepting the little box that was

brought in by Tommy for kindling? A. No, sir; I don't think there was.

Q. Do you mean to say that you stayed there over an hour? A. Yes, sir.

Q. Without any fire excepting a little box of kindling wood? A. Yes, sir.

Q. Have you talked with the State officers about this matter within a week? A. I have.

Q. You talked with Colonel Whitney and Mr. Rhodes? A. I talked with Mr. Rhodes and Mr. Hammond.

Q. Talked with Major Hammond? A. Yes, sir.

Q. And where? A. At my home.

Q. How long ago? A. Last Saturday and last night.

Q. Was there any other officer with him? A. Mr. Rhodes and Mr. Hammond.

Q. A week ago last Saturday night? A. Last Saturday night.

Q. A week ago last Saturday? A. Last Saturday.

Q. And did they ask you what you knew about this case? A. They did not; they just asked me a few questions.

Q. Had you seen them before that time? A. No, sir.

Q. When was it that you saw those men the very first time you met either of them? A. Mr. Hammond and Mr. Rhodes?

Q. Yes, or either of them? A. Well, that was the first time I met them to talk to.

Q. Hadn't they been to see you before? A. They had been there, but I wasn't at home.

Q. Hadn't you told them your story before that time? A. I told them what I was asked.

Q. And didn't you before last week tell them your story? A. Before last week?

Q. Yes. A. No, sir.

Q. Had they ever seen you before last week? A. No, sir.

Q. And at the time when you saw them last week, did you answer their questions? A. Yes, sir.

Q. And didn't you tell them that the first time you saw John O'Neil that night was quarter of 8? A. No, sir, they asked me if I saw John O'Neil that night; I told them that I had met him at quarter of 8. They never said any more; they said much obliged, and walked away.

Q. And didn't they ask you if that was the first time? A. No, sir; they just asked me if I see him.

Q. And didn't they ask you if that was all you knew about the case? A. No, sir.

Q. And didn't you tell them that you knew no more about the case?
A. No, sir.

Q. And didn't you tell them that you didn't see John O'Neil before quarter of 8? A. No, sir; they didn't ask me.

Q. When was that talk? A. Saturday.

Q. What Saturday? A. Last Saturday.

Q. You mean two days ago? A. A week from last Saturday.

Q. The Saturday before this trial began? A. Yes, sir.

Q. And where? A. My home.

Q. Anybody present? A. Nobody.

Q. Except those gentlemen? A. That is all was present, me and those two gentlemen.

Q. What time of day was it? A. It was about quarter of 12.

Q. Last January were you attending school? A. I was.

Q. When first did you recollect that you saw John O'Neil going down Depot Hill? A. When did I first?

Q. When did you first recollect it? A. Why, the minute I set my eyes on him.

Q. I know, but after the death of Mrs. McCloud was known, when did you first recollect it? A. Why, I knew I see him right along afterwards.

Q. Did you tell anybody? A. I didn't, except his own brother.

Q. When did you tell Tommy? A. That night he asked me if he was very full when I see him in the hut.

Q. What did you tell him in the hut? A. I told him he wasn't very full.

Q. Did you tell Tommy where you saw him? A. I did not.

Q. Whom did you tell first that you saw John on Depot Hill at half-past 7? A. First Mr. Beer and next Mr. Dowlin.

Q. Had you told it in your own home at all? A. I had not.

Q. Had you told it in the O'Neil family at all? A. I had not.

Q. And you didn't tell it to the State officers? A. No, sir; they didn't ask me.

Re-direct Examination.

Q. (by Mr. DOWLIN). How old are you? A. Fifteen the seventeenth day of August.

Q. Where were you attending school? A. Arms Academy.

Q. In Shelburne Falls? A. Yes, sir.

Mr. DOWLIN. That is all.

GEORGE ATKINS — sworn.

Q. (By Mr. DOWLIN). What is your name? A. George Atkins.

Q. What is your age? A. Fifteen.

Q. Where do you live? A. On Wilmington Street, Buckland side.

Q. Where is that as to Shelburne bridge, which way? A. South-east.

Q. Will you turn around and see if you can find the way you go from the bridge to your house, on the map? Now, this is the bridge here, and that is the State road there, and there is Ward's Corner. Starting from the bridge here, Amstein's store, how do you go? A. Go that way [indicating], and go this way, go up here, over to there — and you haven't got the rest of it.

Q. The rest of it is not there. You put your finger somewhere where you think the house would be. A. Go up that way, then cross over that way, and here is the railroad bridge, and go across the railroad bridge, and the first house on the left-hand side.

Q. First house on the left-hand side. What street is it? A. Wilmington.

Q. Wilmington? A. Yes, sir.

Q. Do you remember Friday night, January 8, the night before Mrs. McCloud's body was found? A. Yes, sir.

Q. Did you have any supper that evening? A. Yes, sir.

Q. Where did you have it? A. At home.

Q. What time did you have supper? A. About 6 o'clock.

Q. Where did you go, if anywhere, after supper? A. First started down to the hut, and stayed there awhile, and then walked down street over to the post-office, and then I came back to Koonz's store, met Tommy O'Neil, and then walked across the bridge and met Jack O'Neil — Johnny O'Neil.

Q. You crossed the Shelburne bridge and went up how far? To the post-office? A. To the post-office.

Q. Where did you meet Tommy O'Neil? A. Koonz's hat store.

Q. And from Koonz's hat store? Is that on Bridge Street? A. Yes, sir.

Q. Where did you and Tommy O'Neil then go? A. Across the bridge.

Q. Directly? A. Yes, sir.

Q. Stop anywhere? A. No, sir.

Q. And whereabouts on the bridge did you meet John O'Neil?

A. I met him about the middle part, first span, Buckland side.

Q. And did you notice if John O'Neil was with any one? A. Yes, sir.

Q. Who was it? A. Mr. Kendrick.

Q. And had you any means of fixing the time when you met John O'Neil on the bridge? A. Had just seen the train go along up by.

Q. Where did you see the train? A. On the iron bridge, coming over the iron bridge, going across Clement Street.

Q. Which way was the train going, east or west? A. West.

Q. What train was it? A. No. 3.

Q. Are you acquainted with the express train that arrives in Shelburne Falls at 7.17, — general appearance of it? A. Yes, sir.

Q. Would you recognize that train if you saw it coming, in the position where you have stated? A. Yes, sir.

Q. And you are sure that was the train that night? A. Yes, sir.

Q. And you saw the train going across the iron bridge? A. Yes, sir.

Q. When you met O'Neil? A. Yes, sir.

Q. With Kendrick? A. Yes, sir.

Q. Where did you go, if anywhere, after that? A. I went up to my house, up home, to my yard.

Q. Where was the first place you stopped at after you crossed the bridge? A. Back of Amstein's store.

Q. What did you stop there for? A. To get a box.

Q. What did you want a box for? A. To build a fire in the hut.

Q. Where did you go after you left the rear of Amstein's store? A. Went up to the yard where the hut was, — my yard.

Q. Up around that same route, up State Street? A. No, sir; went across the railroad track; took a short cut.

Q. Now, on which side of the bridge were you when you met O'Neil and Kendrick? A. On the south side.

Q. Will you state whether when you crossed the State road you had an opportunity to see up the road? A. Yes, sir.

Q. And towards the Baptist church? A. Yes, sir.

Q. Did you see any lady? A. Not that I remember.

Q. And did you see John O'Neil again that night? A. No, sir.

Q. Did you see him on Saturday? A. No, sir.

Q. When did you see him again? A. Sunday, I guess.

Q. Was he sick? A. No, I didn't see him Sunday, either; I don't know when it was when I see him again.

Q. Have you stated all that you know about meeting O'Neil that night? A. Yes, sir.

Cross-examination.

Q. (by Mr. KNOWLTON). What is this hut? A. It is a place up in my yard; we go up there nights to sit down and talk.

Q. What for? A. Just to keep warm out of the cold.

Q. What do you want to keep warm and out of the cold for? A. So we won't freeze.

Q. Haven't you got a house you can go into? A. Yes, sir.

Q. Don't you have a fire in the house? A. Yes, sir.

Q. What is the use of going into the hut, then? A. We have more fun there.

Q. What fun? A. Oh, sit down and talk, and play cards, and one thing and another.

Q. Smoke cigarettes? A. Yes, sir.

Q. So it is a place where boys get together and sit down, and talk, and smoke cigarettes? A. Yes, sir.

Q. Couldn't you do all that outside? A. We go in to get warm.

Q. Well, you wouldn't have to stay outside; you could go home.
A. There wouldn't be much fun in the house; we have to keep still.

Q. How many boys go up in the hut? A. Just as many as I have a mind to let in.

Q. Oh, you are the boss? A. Yes, sir.

Q. When you first went in there, there were not so many? A. No, sir.

Q. Who was there then? A. There wasn't nobody.

Q. The crowd hadn't got together? A. No, sir.

Q. Well, that was after supper, wasn't it? A. Yes, sir.

Q. And you went from there down to the post-office, you say?
A. Yes, sir.

Q. What for? A. Why just to go down to see if I could meet the mail.

Q. What? A. To see if I could see Tom.

Q. You didn't see Tom when you first went down? A. No, sir.

Q. Got clear to the post-office first? A. Yes, sir.

Q. What did you want to meet Tom for? A. To go up to the hut.

Q. Didn't he know the way? A. He did.

Q. He did? A. He did, but I didn't like to stay in there alone:
I wanted him.

Q. You went down to get company? A. Yes, sir.

Q. To get the crowd together? A. Yes, sir.

Q. Was he the only one you wanted to see? A. He was the only one in particular.

Q. And do you go to the academy too? A. No, sir.

Q. Did you go to school then? A. No, sir.

Q. How old are you? A. Fifteen.

Q. Whom did you see when you got to the post-office? A. Met Johnnie Ryan.

Q. Was he in there when you got in there? A. No, sir; he was outside.

Q. Did he go in with you? A. No, sir.

Q. Standing there when you got there? A. Yes, sir.

Q. Did he come away with you? A. No, sir.

Q. He stayed there after you did? A. Yes, sir.

Q. When did you next see Johnnie Ryan? A. When he came up to the hut.

- Q. How long afterwards? A. Oh, about 8 o'clock, I should think.
- Q. What? A. About 8 o'clock.
- Q. He didn't come up with you? A. No, sir.
- Q. Who came up with him? A. Came up alone.
- Q. Who else came up to the hut besides Johnnie Ryan and Tommy O'Neil? A. Eddie O'Neil.
- Q. Anybody else? A. I don't think there was.
- Q. Only four that night? A. That is all.
- Q. You didn't keep any run of time till you got to the post-office, did you? A. No, sir.
- Q. Did you keep any run of the time at the post-office? A. Well, it was about a quarter-past 7 I was at the post-office.
- Q. Did you keep any run of the time there? A. I don't understand what you mean.
- Q. Did you look at any clock, or anything of that sort? A. Yes, sir.
- Q. What clock did you look at? A. Post-office clock.
- Q. What did you look at the post-office clock for? A. To see what time it was.
- Q. What did you want to know what time it was for? A. Fun of it.
- Q. Do you mean that for the answer? Had you any occasion to know what time it was at all that night? A. No, sir.
- Q. Any time of the night? A. No, sir.
- Q. Did you care anything about what time it was that night? A. No, sir.
- Q. And you saw the train go by? A. Yes, sir.
- Q. Now, when you met O'Neil, John O'Neil, he was walking with Kendrick? A. Yes, sir.
- Q. Over towards Shelburne? A. Yes, sir.
- Q. Did Mr. Kendrick have his milk cans in his hand? A. I didn't notice them, if he did.
- Q. Did you speak to either of them? A. No, sir.
- Q. Did you know John? A. Yes, sir.
- Q. Well? A. Yes, sir.
- Q. You didn't speak to him? A. No, sir.
- Q. Had you seen him before that day? A. No, sir.
- Q. Did he walk straight? A. Yes, sir.
- Q. He looked to you as if he could walk all right, did he? A. Yes, sir.
- Q. He walked all right. And the only way you know about the time is you saw the train go over the bridge? A. Yes, sir.
- Q. When did you first talk about this with anybody afterwards?
- A. Up in the hotel, Mr. Greene and Mr. Hammond.

Q. How long afterwards? A. Oh, this was last week, I think.

Q. That is the first time you ever talked with anybody? A. No, it was week before last.

Q. Was that the first time you ever talked with anybody? A. Oh, they asked me if I knew anything, and I told them.

Q. Was that the first time you talked with anybody? A. No, sir.

Q. What was the first time you talked with anybody about it? A. My mother.

Q. When? A. The day after John O'Neil was taken.

Q. That would be Tuesday? A. Yes, sir.

Q. You hadn't talked about it before with anybody at all? A. No, sir.

Q. Are you a brother of Joe Atkins? A. Yes, sir.

ELIZA WEBSTER — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Eliza Webster.

Q. Webster? A. Yes, I was married the second time; my name was Eliza Burleigh before.

Q. Eliza Webster? A. Yes, sir.

Q. Where do you live? A. In Orange, sir; Pleasant Street.

Q. Speak up louder, so the jury may all hear you. A. Orange, in Pleasant Street.

Q. Do you remember Friday night, January 8? A. Yes, sir.

Q. Were you at home on that night? A. No, sir; I was at Shelburne Falls.

Q. What time did you leave your home? A. Five minutes to 6, on the train.

Q. What time did you arrive at Shelburne Falls? A. Well, I couldn't tell you; I got on the train — I got off the train that gets to Shelburne Falls.

Q. What time did you understand the train was due that you got on? A. Well, they say on the 7.17.

Q. And did you come on that train on Friday night, January 8, that was due there at 7.17? A. Yes, sir.

Q. You got off the train at the depot? A. Yes, sir.

Q. What did you do after you got off the train? A. I gave two parcels — one parcel to the hackman and one parcel to my sister's girl, to take down to the hotel.

Q. And what did you do then? A. I walked with my sister's girl and Nettie Cardwell as far as the crossing, and then I bid them good-night, and they went; and then after they had gone, I went down over the bridge.

Q. You went down Depot Hill? A. Yes, sir.

Q. And crossed the bridge? A. Yes, sir.

Q. And how far did you travel on the other side of Shelburne Falls?
A. About as far as March's barber shop.

Q. Now, when you crossed the bridge, did you see John O'Neil?
A. Yes, sir; he stood at the corner — at the bridge — near March's, near the barber shop.

Q. Is there an iron rail that extends to the bridge? A. Yes, and he stood like this up against the railing, with his back; he had on a large dark coat.

Q. Were any words passed between you? A. He says, "Hello, Mrs. Burleigh."

Q. Were there any words that passed between you so that you recognized him? A. He only says, "Hello, Mrs. Burleigh."

SHELDON, J. Just say yes or no.

THE WITNESS. Yes, sir.

Mr. KNOWLTON. I don't care to have that stricken out; that is all right.

Q. (by Mr. DOWLIN). And where did you then go? A. I went as far as March's barber shop and looked if my sister was in the street; I didn't know she had had an accident with her knee then.

Q. Did you turn around then? A. Yes, and came back.

Q. And did you see anything of O'Neil again that night? A. Yes, he was stood against the railing as I passed him again.

Q. He stood against the railing when you passed him again? A. Yes, sir.

Q. And what time would you think it was when he was leaning against the rail on the Shelburne side of the bridge, the first time?

A. Betwixt five and twenty minutes past 7 and half past.

Q. Some time between twenty-five minutes past 7 and half past?
A. Yes, sir.

Q. Do you fix that time — A. Yes.

Q. — by the time the train arrived and what you did afterwards?
A. Yes, sir.

Q. And you say that when you turned round and passed back you saw him leaning against the rail? A. Yes, sir.

Q. How much later was that? A. It wasn't two seconds, sir, in going as far as that and back again; I turned myself right round and came back.

Q. Just a very short time. A. Yes.

Q. And did you see anything of John O'Neil again that night? A. No, sir.

Q. And where did you go after? A. Out to my sister's, Mrs. Holt's.

Q. Over to your sister's? A. Mrs. Holt's.

Q. What route did you travel? A. I went over by the bridge

and by the Woodward House and under the Arch and on the first road.

Q. And did you see anything of John O'Neil on Saturday? A. No, sir.

Q. What time did you go home? A. Sunday afternoon, on the ten minutes to 3 train.

Q. You remember, then, the occurrence of Mrs. McCloud's body being found? A. Yes.

Q. So that would fix the date definitely in your mind when you were there? A. Yes, sir.

Mr. HAMMOND. That is rather leading.

Cross-examination.

Q. (by Mr. HAMMOND). Your name was Mrs. Burleigh at that time? A. No, sir; my husband has been dead sixteen years last May.

Q. When were you married and became Mrs. Webster? A. Well, I have been married nearly eighteen years now, and my husband got killed in Bridgeport.

Q. You say O'Neil called you by the name of Mrs. Burleigh? A. Yes, because it was my name, — my daughter's name at Shelburne Falls is Burleigh, and that is the reason I go by the name of Mrs. Burleigh a good many times. I do in Orange now; any one calls me Mrs. Burleigh more than they do Mrs. Webster.

Q. Is your husband living? A. No, I tell you he has been dead sixteen years; he was killed in Bridgeport.

Q. Your husband by the name of Webster is not living? A. Yes, my last husband.

Q. You are a widow? A. Yes, sir.

Q. And you arrived on the train coming in at 7.17? A. Yes, sir.

Q. Was any one with you in the seat in the train? A. No.

Q. Were you talking with any one when you came in? A. No, never talked to any one; no, sir.

Q. Did you have any bundles, any baggage as you came in? A. I had two bundles to give to my daughter.

Q. How large were the bundles? A. No, not very large; they were some washing.

Q. Did you have them in your arms? A. No, on the seat side of me.

Q. When you went out of the car, did you take up your bundles? A. Yes, sir.

Q. Can you describe them, as to how large they were? A. Yes, I gave one to the hackman and one to my sister's girl.

Q. You recollect whether many people got out of the train there?

A. Oh, yes; there was quite a few got out; there wasn't so very many that night got out.

Q. Do you recollect whether you got out in front of the crowd or with the crowd, or last, out of the car? A. Well, I couldn't tell you that, sir, I am sure.

Q. Did you pay any particular attention to that? A. No, I didn't pay any attention at all to it, and so I will not say, because I don't know; didn't take any notice.

Q. Did you meet any old acquaintances on the platform? A. Met my sister's daughter, my youngest sister's; and I met Nettie Cardwell, that was her companion; they was both together.

Q. You said you gave something to the hackman? A. I gave one parcel to the hackman and one to my sister's girl.

Q. What is the name of the hackman, please? A. I don't know his name — at the Shelburne Falls House.

Q. How did you happen to give anything to the hackman, and didn't ride yourself? A. Because my daughter — she did laundry work at the hotel.

Q. What? A. My daughter did the laundry work at the hotel; that was the reason I gave it to him.

Q. Where did you go to find the hackman? A. He stood at the depot.

Q. Did you have to go around to the other side to meet the hackman? A. No, he stood opposite the train when I got out.

Q. Did you speak to the hackman and ask him to do something for you? A. Yes, if he would give it to Elizabeth Burleigh, the parcel, and he said yes.

Q. That took a little time? A. Yes, sir.

Q. Did you meet any one else whom you knew on the platform? A. My sister's girl.

Q. And what is her name? A. Florry Martin.

Q. How old is she? A. Well, she will be eighteen, I should say; seventeen or eighteen, I couldn't tell you for certain, how old.

Q. Did you meet any one with her? A. Yes, Nettie Cardwell, she was with Dr. Canedy. She does housework for Dr. Canedy.

Q. Dr. Canedy's servant girl? A. Yes.

Q. Did you know her before? A. Oh, yes.

Q. And whereabouts did you meet them? A. Met them right on the depot; they was there when I got off the train.

Q. Were they there to meet you? A. No, they didn't know I was coming.

Q. Did you know you were to meet them? A. No, I didn't send them word I was coming at all to Shelburne Falls.

Q. Did you chat with your niece and her friend? A. Yes, sir.

Q. You stayed there a few minutes, chatting in the ordinary way?

A. Yes, they stayed with me to the crossing, and bid me good-night, and away they went.

Q. Whether or not you inquired for your sister? A. Yes, sir.

Q. Inquired for her family? A. No, I didn't inquire at all; asked her how her mother was, that was all.

Q. Whether you inquired for the health of the lady who was with your niece? A. I spoke to her, that was all.

Q. How long since you had visited Shelburne Falls before? A. I haven't been down — oh, I have been down about three months before that.

Q. And you had not seen this niece for three months? A. No.

Q. Had you seen your sister in three months? A. No, I hadn't seen any of them.

Q. Did you visit a little while along the platform and out across the crossing with these two girls? A. I just stood a few minutes, and then we walked down gently together, the three of us, to the crossing, and I bid them good-night.

Q. Did you tell those girls anything about where you were going? A. No, only my sister's, that was all.

Q. Where did your sister live? A. Well, I couldn't tell you the name of the street; you go up by the Woodward House, and cross on the first crossing.

Q. Don't you know what street is Clement Street? A. Well, I never knew what it was, and have lived there over two years.

Q. Can you point it out behind you? A. No, sir.

Q. You came up Clement Street? A. Yes, sir.

Q. And walked down the hill on the railroad? A. No, go on the street.

Q. Now, didn't you tell your niece and her friend you were going straight up to your sister's? A. Yes, sir; I did tell her so, but I didn't.

Q. Was that true? A. No, it was not; I know it.

Q. You told those girls something not true? A. She said, "Where are you going?" and I said, "Up to my sister's."

Q. Haven't you said you loitered quite a while on the crossing because you wanted to shake off those girls? A. I said I didn't want them to know where I was going.

Q. [Question repeated.] A. Yes, sir; I had to wait quite a while on the crossing.

Q. You wanted the girls to get out of sight, and not know where you were going? A. I didn't want them to know my business.

Q. Didn't want them to know where you were going? A. Yes, sir.

Q. Then your business was not to see your sister? A. Yes, sir. She goes into the street every night.

Q. What was there about your business you were unwilling to have the girls know? A. Because I didn't want them to know; I was not obliged to tell them my business.

Q. The girls were going exactly the same route you meant to go? A. Yes, sir.

Q. You meant to go down Depot Hill and over the bridge? A. Yes, sir.

Q. And you did not mean to go up Clement Street and go to your sister's? A. I had business to do.

Q. [Question repeated.] A. I didn't want them with me at all.

Q. You knew the girls were going over the iron bridge? A. I told my niece I was going to my sister's.

Q. Did you know those girls were going over the iron bridge? A. Yes, sir.

Q. And you were intending to go over the iron bridge? A. Yes, sir.

Q. And you waited until they got out of sight before you started from the crossing? A. Yes, sir.

Q. You saw them well over the iron bridge into Shelburne Falls before you started? You meant to be sure they didn't see where you were going? A. Yes, sir.

Q. Now, you were going to the barber's shop? A. I went as far as there.

Q. You had an appointment to meet a man there? A. I didn't go to meet no man there.

Q. Haven't you said you had an appointment to meet a man there? A. It was a friend of mine.

Q. Haven't you said you had an appointment to meet a man there at the barber's shop? A. Yes, sir; I did say so.

Q. What was the man's name? A. It was a friend of mine.

Q. What was the man's name? A. They call him Matt Morden.

Q. Well, who was he? A. He was a friend at Shelburne Falls; works in the cutlery; I have known him for over two years.

Q. You expected to meet him in the barber's shop? A. I have been down there and seen him before.

Q. You had an appointment, and expected to meet him there? A. He didn't come.

Q. Haven't you said you expected to meet him at the barber's shop? A. Yes, sir.

Q. You didn't want these girls to know of your errand? A. No.

Q. You told them falsely you were going to your sister's? Is that true? A. Yes, sir; it is true; I won't tell no stories for one side or the other.

Q. You waited until you were sure you had shaken the girls off before you started from Depot Hill? A. Yes, sir.

Q. Saw them clear over before you started? A. Yes, sir.

Q. Then walked slowly down, did you? A. I walked slowly down the road.

Re-direct Examination.

Q. (by Mr. DOWLIN). Would you be able from the railroad crossing on Depot Hill to see clear across the bridge that night. A. I thought I saw them going across, but I will not be certain.

Q. Would you be able, or could you see across the bridge that night? A. When I got down the hill, I could see a little across the bridge.

Q. Then you walked down the hill? A. Yes, sir. [Objected to.]
SHELDON, J. Put your question.

Q. (by Mr. DOWLIN). While you were going down the hill at any point down the hill, did you meet any team that you recognized? A. No, sir.

Q. And you stated that you put it between 7.25 and 7.30? A. Yes, sir. [Objected to.]

SHELDON, J. Put your question.

Q. (by Mr. DOWLIN). How long do you mean by "A few minutes," when you stood on the railroad crossing a few minutes? A. Well, I stood a little while, while they got down the road.

Q. How long would you put it? A. I couldn't say; five minutes.

Q. Five minutes? A. Yes.

Q. How long would you put it that it took you to go from where you left them to where you saw John O'Neil? A. I couldn't tell you for sure; I walked right down the road.

Q. You walked right down? A. Yes, sir.

Q. Now, haven't you stated, Mrs. Burleigh, that you walked rapidly down that hill? A. Yes, sir; but I forgot about it; it put me about so.

Q. You walked down the hill? A. Yes, sir.

Q. Haven't you stated you wanted to go down there to the barber's shop as soon as you could? A. Yes, sir.

Q. And didn't you? A. Yes, sir; soon as I could I went down.

Q. Now, as soon as you left these girls, didn't you hurry down to that barber's shop? A. Yes, sir; I did, — I said I did.

Q. And you think it took you about how long? A. Well, it would be between half-past 7 and five and twenty minutes past.

Q. You put it that time? A. Yes, sir.

Q. Did you see the clock in the barber's shop? A. I didn't notice the clock, but I know by the time I should get up to my sister's.

Q. What time did you get up to your sister's, after you didn't see the party? A. I think it would be about five and twenty minutes to 8.

Q. Twenty-five minutes to 8? A. Yes, sir; twenty-five minutes to 8, when I would get to my sister's.

Q. Did you see the clock after you got to your sister's? A. Yes, sir; I think it would be about that time I looked at the clock.

Q. Were you informed what time it was after you got there? [Objected to. Sustained.]

Q. Did you see the clock after you got there? A. No, sir; I didn't; that would be about the time I would get there.

Q. How do you fix it that it was about twenty-five minutes to 8 when you got there? A. I am going about the time I should get up from the train, and leaving there.

Q. And you don't care to change or alter your statements? [Objected to.] A. No, sir.

SHELDON, J. You have been over the ground fully.

Re-cross-examination.

Q. (by Mr. HAMMOND). You didn't see any clock up to your sister's? A. No, sir.

Q. Didn't think anything about the time? A. Never thought about the time; never entered my mind, the time did not.

Re-direct Examination.

Q. (by Mr. DOWLIN). Have you any means of knowing what time it was when you reached your sister's? A. No, sir; I have not; not any chance of time; I couldn't say, because I don't know.

DELIA QUINN — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Delia Quinn.

Q. What is your age? A. Nineteen.

Q. Where do you live? A. Shelburne Falls, Buckland side.

Q. On what street? A. Conway Street.

Q. Whether or not you remember Friday, January 8, the night before Mrs. McCloud's body was found? A. Yes, sir.

Q. Where do you work? A. In Foster's peg factory.

Q. Can you turn around and point out on the map where Foster's peg factory is? That black streak there is the Fitchburg Railroad. There is the bridge across the river. I will come and give you a point to start from. There is the bridge that crosses from Buckland to Shelburne, and that is the State road, and that is Ward's corner there, and there is Clement Street. Now, can you find where the location of the factory would be? It is not stated on the map, but about where it would be? A. About there [showing].

Q. Do you go off Clement Street to get to it? A. Yes, sir.

Q. Do you go up Clement Street from the State road to get to it? A. No, sir; I go up past Amstein's store to get to it.

Q. You go around this way [showing]? A. Yes, sir.

Q. Whereabouts is the peg factory as to the Fitchburg Railroad?
A. Right side of the Fitchburg Railroad.

Q. How far is it from Clement Street, to your best judgment? A.
I don't understand you.

Q. Well, about how far is the factory located from Clement Street?
Is the factory north, or south, or east, or west? A. North of Clement Street.

Q. About how far north of Clement Street? A. I can't tell just
how far it is from Clement Street.

Q. From your memory? As far as from the iron bridge, the railroad bridge, to Ward's corner? A. Yes, sir.

Q. About that distance? A. Yes, sir.

Q. Were you at work in that factory on Friday, January 8? A.
Yes, sir.

Q. Did you have an appointment to meet anybody that evening?
A. I did.

Q. If so, who? A. Rosy O'Neil.

Q. Where were you to meet her? A. At the Shelburne Falls House.

Q. Do any relatives of Rosy O'Neil work at the Shelburne Falls House? A. Three sisters.

Q. What time did you finish your work? A. Six o'clock.

Q. Did you have any conversation with the party you had this appointment with just before you finished your work? A. Yes, sir; with Rosy.

Q. What time did you leave the factory? A. Six o'clock.

Q. At what time did you get home? A. About ten minutes after 6.

Q. And you had your supper that evening? A. Yes, sir.

Q. And where did you go after supper? A. Over to the hotel.

Q. Now, did you go up—where do you live? A. On Conway Street.

Q. By the cutlery factory? A. Yes, sir.

Q. Did you go up Conway Street to the bridge? A. Yes, sir.

Q. Across the bridge? A. Yes, sir.

Q. And after you crossed the bridge, on the Shelburne side, did you see anything of John O'Neil? A. I did.

Q. Whereabouts? A. In front of Davis's store.

Q. Is that right by the entrance of Haller's pool room? A. Yes, sir.

Q. About what time should you place that? A. Half-past 7.

Q. How do you know it was about half-past 7? A. I got over to the hotel and I looked at the clock, and it was just half-past 7 when I got to the hotel.

Q. How far was that from the hotel? A. Just a few steps from the hotel.

Q. A hundred feet? A. I don't know.

Q. And did you see John O'Neil again that night? A. No, sir.

Q. Where did you go after you left the hotel? A. Post-office.

Q. Whom did you meet at the hotel? A. Rose O'Neil.

Q. Was she there waiting for you? A. Yes, sir.

Q. And were you on time for your appointment? A. No, sir; I was late.

Q. And where did you go with Rose O'Neil after you met her there at the hotel? A. Over to the post-office.

Q. And where from the post-office? A. Back to the hotel.

Q. And where from the hotel? A. Home.

Q. Where did you leave Rose O'Neil that night? A. At the end of the bridge.

Q. And about what time? A. I don't remember.

Q. And how long have you known John O'Neil? A. All my life.

Q. Did you use to know him when you were a little girl? A. Yes, sir.

Q. You were well acquainted with him? A. Yes, sir.

Mr. DOWLIN. That is all.

Cross-examination.

Q. (by Mr. KNOWLTON). Are you pretty well acquainted with the O'Neil family? A. I am.

Q. Pretty intimate with them? A. Yes, sir.

Q. Have been a good while? A. Yes, sir.

Q. And did you ever talk about this matter before? A. No, sir.

Q. With nobody? A. No, sir.

Q. No person? A. Yes, sir.

Q. Whom? A. With Mr. Beer, Mr. Dowlin and Mr. Hammond.

Q. Mr. Beer the counsel here? A. Yes, sir.

Q. And Mr. Dowlin, the counsel? A. Yes, sir.

Q. And whom else? A. Mr. Hammond.

Q. Nobody else? A. No, sir.

Q. What? A. No, sir.

Q. Never? A. No, sir.

Q. Never mentioned it to anybody? A. No, sir.

Q. You mean that? A. Yes, sir.

Q. Never mentioned it to any human being? A. No, sir.

Q. You mean State officer Hammond? A. Yes, sir.

Q. When did you talk with State officer Hammond? A. I don't remember.

Q. How long ago was it? A. About two weeks ago.

Q. And when did you first talk with Mr. Beer about it? A. I don't remember.

Q. About how long ago? A. I don't remember.

Q. Was it soon after the murder? A. I don't remember.

Q. Was it nearer the time of the murder or nearer now? A. I don't remember; nearer now.

Q. And was it within a month? A. I don't remember.

Q. What? A. I don't remember.

Q. Within three months? A. No, sir.

Q. I beg pardon? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Did you talk first with Mr. Beer or Mr. Dowlin? A. Mr. Beer.

Q. How soon afterwards did you talk with Mr. Hammond? A. Shortly after.

Q. How? A. Shortly after.

Q. And did you talk with him or did you talk with Mr. Hammond first? A. I talked with Mr. Beer first.

Q. And then with Mr. Dowlin? A. No, sir; Mr. Hammond.

Q. Mr. Hammond before you talked with Mr. Dowlin? A. Yes, sir.

Q. Now, did you say Mr. Hammond's talk was a short time ago? A. Yes, sir.

Q. And it was Mr. Dowlin you talked with since? A. Yes, sir.

Q. How lately have you talked with Mr. Dowlin? A. I don't remember.

Q. Did you tell Mr. Hammond all you knew about it? A. No, sir.

Q. Why not? A. Because I didn't know I was obliged to tell him.

Q. That is, you kept back the truth, is that it? A. I didn't know I was obliged to tell him until I was under oath.

Q. Did you keep back part of this case from Mr. Hammond? A. Yes, sir.

Q. Purposely? A. No, sir.

Q. Did you intend to keep it back? A. No, sir; I did not.

Q. Did you intend to tell it all to him? A. No, sir.

Q. You didn't intend to tell it all to him? A. I didn't know as I was obliged to —

Q. Did you intend to tell him all you knew about this case? A. No, sir; I did not.

Q. Did you intend to tell him all you knew about it? A. No, sir.

Q. Then you had an intention about it? A. No, sir; I didn't have any intention about it.

Q. Why didn't you tell him all you knew about this case? A. I didn't know as I was obliged to tell him.

Q. Is that all the reason you had? A. Yes, sir.

Q. And so that was the reason you didn't tell him all you knew about this case? A. Yes, sir.

Q. Did he ask you what you knew about this case? A. Yes, sir.

Q. Wouldn't that be a good reason for you to tell him all you knew about this case? A. Yes, sir.

Q. And when he asked you, you kept back part of it? A. Yes, sir.

Q. You didn't tell him that you saw John O'Neil? A. No, sir.

Q. You didn't tell him when he asked you if you saw John O'Neil? A. No, sir.

Q. Didn't you go farther and tell him you hadn't seen John O'Neil?

A. Yes, sir.

Q. (by Mr. DOWLIN). Did you or did you not see John O'Neil?

Mr. KNOWLTON. I beg pardon.

SHELDON, J. You have covered that fully.

JAMES J. KENNEDY — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. James J. Kennedy.

Q. What is your age? A. Eighteen.

Q. Where do you live? A. Shelburne Falls, Buckland side.

Q. Are you at work? A. Yes, I work for the H. H. Mayhew company, down on the hillside.

Q. You remember January 8? A. Yes.

Q. Friday night? A. Yes.

Q. And are you the brother of Timothy Kennedy? A. Yes, sir.

Q. The gentleman without a leg? A. Yes, sir.

Q. And where did you have your supper Friday night, January 8?

A. I went home after work, and ate it about ten minutes past 6, — not home about ten minutes past 6.

Q. Who ate supper with you? A. My brother, my mother and sister.

Q. Any one else? A. No, sir.

Q. Was there any one visiting at your house? A. No, sir, — yes, sir; I made a mistake there; my cousin, Mr. Fenton, was up from Leeds.

Q. What is his first name? A. Reuben.

Q. He ate supper with you? A. Yes, sir; he and my brother was walking home, and I met them just before they got into the house; they was in ahead of me.

Q. What time did you get through supper? A. About twenty minutes past 6.

Q. Whom did you get out of the house with, if any one? A. My cousin, Mr. Fenton.

Q. What time did you say you got through with supper? A.

About twenty minutes past 6, and I went up stairs and changed my clothes and went out of the house; about quarter of 7 I left home.

Q. And after you left home where did you go? A. Up to the depot.

Q. And whom did you go with? A. My cousin, Mr. Fenton.

Q. Will you turn around to the map and find where you live? A. State Street. I think that is the State road going up towards Wood's, up on the State road.

Q. How far up? A. The third house.

Q. Well, you go by that next corner of the Methodist church there? A. Well, this is on the Buckland side, isn't it?

Q. Yes, that is right in front of the bridge. A. I go right up past Jake Pfersick's saloon, and it is the third house on the left-hand side.

Q. What time did you say it was that you left the house? A. About quarter to 7.

Q. Where did you go? A. Up to the depot.

Q. Well, where did you and Reuben Fenton go after you got to the depot? A. Well, we waited to see the train come in, and then we started down street.

Q. Where did you go down street? A. Well, we joined in with a friend going across the bridge, and then we went up to the post-office.

Q. Whom did you join in with? A. Johnny Ryan.

Q. And where did you and Johnny Ryan and Reuben Fenton go? A. Up to the post-office, and waited there till about, I should say, twenty-five minutes of 8, and then we left.

Q. What makes you think it was twenty-five minutes of 8 then? A. Well, I heard the first bell ring; it takes it usually ten minutes before the bell rings.

Q. Where did you go then? A. Walked slowly down towards the bridge, in front of the barber shop.

Q. Down Bridge Street? A. Yes, sir.

Q. In front of the barber shop? What barber shop? A. Johnny March's.

Q. Where is that? Next to the electric railroad track? A. Yes, sir; right next to that line.

Q. What did you do after you got in front of the barber shop, if anything? A. Well, we stopped in front of the railing. We waited there about two minutes or three, I should judge, and I turned around and was walking over the corner, and I heard a fellow come up to Johnny Ryan and say, "Say, give us a cigarette, will you?" With that I glanced over my left shoulder like that, and see a man.

Q. Well, who was the man? A. Well, I made up my mind by appearance, and by the long ulster and soft cap, that it was John O'Neil.

Q. How long have you known John O'Neil? A. Ever since I was about four or five years old I can remember him, about thirteen or fourteen years ago.

Q. Would you recognize John O'Neil's voice if you heard it without seeing him? A. Yes, sir; I could recognize him anywhere.

Q. Did you hear his voice? A. Yes, sir; I heard him plain.

Q. Would you recognize him by his form? A. Well, I should judge he was a fellow about six feet tall, with his long ulster and cap on.

Q. What was the impression on your mind when you glanced over your shoulder and saw that tall man talking with Johnny Ryan?

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. If he made up his mind who it was, he may state that.

Q. Who did you make up your mind it was? A. Well, if anybody had come along and asked me, I should have said it was John O'Neil.

Mr. KNOWLTON. I pray your Honors' judgment to that answer.

SHELDON, J. That answer is not responsive to the question.

THE WITNESS. Well, in my own mind, then, it was John O'Neil.

Q. And what time was that? A. I should say it was twenty minutes of 8.

Q. How would you fix the time at twenty minutes of 8? A. Because it took us about twenty minutes to walk down to the post-office, and we only stopped there two or three minutes, and I turned toward the corner, and I turned round and see him in about five minutes.

Q. Did you see John O'Neil doing anything when you turned around? A. Yes, sir; he kind o' had his fist up like that to Johnny Ryan, fooling.

Q. So you got a good side view of him? A. Yes, sir.

Q. Where did you go after that? A. Well, we stood there and I said to my cousin, Mr. Fenton— [Objected to.]

Q. Never mind what you said. A. Well, we went from there into the pool room at five minutes to 8.

Q. How do you know it was five minutes of 8? A. I pulled out my watch and looked at it.

Q. How long had you stood there after seeing John O'Neil before you pulled out your watch and looked at it? A. Well, fifteen minutes.

Q. And where did you then go? A. Into the pool room.

Q. How long did you stay in the pool room? A. Till 9.30.

Q. And did you afterwards see John O'Neil? A. Yes, sir.

Q. At what time? A. Well, he come into the pool room about 8.30.

Q. And did you hear him say anything there? A. Well, he came in; he got to joking; he wanted to play a fellow pool, and we kind

o' began to laugh as though he didn't have the money, and he pulled out some money.

Q. And did you see him open the door there? A. Of the pool room?

Q. Yes. A. Yes, sir; he stuck his head in, and said there was a fellow outside with a team for him.

Q. And how long after you went into the pool room was it that you saw O'Neil put his head in the door? A. About thirty-five minutes.

Q. And did you see him again that night? A. What? After the pool room?

Q. Yes; after you left the pool room. A. No, sir.

Q. Where did you go after you left the pool room? A. Went home and went to bed.

Q. And you didn't see him again that night? A. No, sir.

Mr. DOWLIN. That is all.

Cross-examination.

Q. (by Mr. KNOWLTON). Do you go to the pool room pretty often? Or did you then? A. I used to go in there; I never played pool in there in my life, though.

Q. Did you go there pretty often? A. Yes, sir.

Q. Most every evening? A. Yes, sir.

Q. And most always see O'Neil there? A. Yes, sir.

Q. He was a regular customer there, went there every night almost? A. Yes, sir; about every night.

Q. Most as soon as he got through supper, usually? A. Well, I couldn't say for that; he usually used to go after the mail.

Q. That is the time almost everybody came in, wasn't it? A. Yes, sir.

Q. What did you go in there for? A. What do you mean, nights?

Q. Yes, sir. A. I used to go in to watch them play pool.

Q. Quite a crowd used to go in nights? A. Yes, sir.

Q. Did they have any name for that place, or not, down there? A. Well not till that came out in the paper; all they used to call it was pool room.

Q. Didn't they ever call it the name that came out in the paper? A. No, sir; not to my knowledge.

Q. Didn't you ever hear it called "Hell's Kitchen"? A. No, sir; not till I see it in the paper.

Q. The first time you took any notice of your watch was five minutes of 8? A. Yes, sir.

Q. And before that you had not taken any notice of time? A. No, sir.

Q. And you didn't leave the post-office until after the mail was

ready to distribute? A. Well, the mail hadn't been distributed till we left; we heard the first bell ring, and I looked.

Q. How long had you been there? A. About five minutes.

Q. How long was the second bell after the first? A. Some nights it was usually about five minutes.

Q. You didn't hear but one bell ring? A. That is all.

Q. And you didn't take any notice what time the bell rung, either? A. No, sir.

Q. And before you saw O'Neil, you stood there some time in the barber shop? A. No, sir; we walked right from the post-office down there, slowly.

Q. Didn't you wait in the barber shop? A. Yes, sir; about a minute and a half or three minutes.

Q. You didn't take any notice of the time you waited around this barber shop, did you? A. No, sir.

Q. You waited around the barber shop? A. Yes, sir; we stopped there.

Q. With whom? A. My cousin Mr. Fenton, and Homer Cudworth.

Q. Homer Cudworth, did he come up with you? A. Yes, sir; he joined us at the post-office.

Q. Did he go any farther with you? A. Yes; he went to the pool room.

Q. He didn't go down to the bridge? A. No, sir.

Q. Was John O'Neil smoking a pipe? A. No, sir.

Q. You were not there when he scratched a match and lit his pipe? A. No, sir.

Q. And if he had done that, he had got it out? A. Yes, sir.

Q. Well, now, you are beating around the bush some. Are you willing to swear that that was John O'Neil that you saw, on your oath? A. How do you mean for that?

Q. I want to know if you are willing to swear that that was John O'Neil that you saw? A. From his appearance I would.

Q. Will you swear that was John O'Neil you saw? A. Well, in my own mind I would swear it was John O'Neil.

Q. Will you swear on your oath that that was John O'Neil that you saw?

Mr. PARKHURST. It seems to me that is pressing a witness —

SHELDON, J. That is a proper question to ask. You may ask the question.

A. No.

Re-direct Examination.

Q. (by Mr. DOWLIN). Mr. Kennedy, will you swear to the best of your knowledge and belief that it was John O'Neil?

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. That question is objectionable in form. [Excluded.]

Q. You were sure in your mind at the time it was John O'Neil?

Mr. KNOWLTON. I pray your Honors' judgment. That was in direct examination, and all gone over with.

SHELDON, J. It is objectionable in form, if it were not.

Mr. DOWLIN. That is all.

Recess.

EDWARD MORRISSEY — *sworn*.

Q. (by Mr. DOWLIN). You have testified here before? A. Yes, sir.

Q. Your name? A. Edward Morrissey.

Q. Mr. Morrissey, are you acquainted with the woods where the body of Hattie McCloud was found? A. Yes, sir.

Q. How long have you lived in your home where you now live?

A. Off and on for thirty-nine years, thirty-eight years, thirty-nine next fall.

Q. How often have you been through those woods? A. Quite a number of times; I couldn't say exactly.

Q. Have you been up the Crittenden road many times? A. Yes, sir.

Q. On that day when you came up through the woods, and saw Mrs. McCloud there, was there any path leading from the road down to the body?

Mr. KNOWLTON. Just wait a minute. Of course I don't have any criticism to make upon independent testimony for the defence from witnesses who were first called by the Commonwealth; but I have an impression that this matter was inquired of on cross-examination by my friend.

SHELDON, J. If it was inquired of in cross-examination, of course you cannot go into it now.

Mr. KNOWLTON. Then of course he will go on.

SHELDON, J. I said if it was inquired of in cross-examination.

Mr. KNOWLTON. Oh, I thought you said it had not been.

Mr. DOWLIN. My brother Beer examined him.

Q. (by Mr. DOWLIN). Well, is there — this matter was not testified about — is there to your knowledge near that place where the body was found a path?

Mr. KNOWLTON. Wait a minute; let me see where that is.

Q. (by Mr. DOWLIN). Any other path? [To Mr. Knowlton] I will admit what you say.

Mr. KNOWLTON. That shows you will admit anything. I don't find this witness was inquired of. Oh, I am looking at the wrong book.

Mr. DOWLIN. The wrong book, I think.

Mr. KNOWLTON. Yes, I think your memory is right; yes, all right.

Mr. BEER. On page 231.

Q. (by Mr. DOWLIN). Was there in that location, when you reached the body, was there in the location where the body was found, another path?

Mr. KNOWLTON. Wait a minute. I pray your Honors' judgment until I know what the purpose is.

SHELDON, J. Of what consequence is it?

Mr. DOWLIN. Our purpose is to show that if Mr. Kendrick saw a path there, it was another path, used for another purpose, and is a well-defined path, and leads to a certain place and leads out from that place to another road.

SHELDON, J. You may put the question.

Q. (by Mr. DOWLIN). Was there such a path? A. There is an old sled road there, — what they call a sled road.

Q. From the Crittenden road, leading down through the woods, a path, a well-defined path? A. Yes, sir.

Q. And how far is that from the opening in the wall where the path along there is that leads down to where Mrs. McCloud's body was found? A. It is about one hundred and eighty feet this side of there.

Q. Down the hill? A. Nearer down; yes, sir.

Q. How do you know? A. I paced it off.

Q. And when? A. Last evening.

Q. And where does that path that is one hundred and eighty feet below, lead to? A. Over onto Mr. Kendrick's road.

Q. Well, is there any objective point that it leads to before it gets over there? A. It leads to the springs there; goes right in through over onto that other road.

Q. Now, will you turn around to the map, Mr. Morrissey; where is the place where the body was found? A. Right here where it was found [showing].

Q. Now, that represents the old road, wood road, that leads up from the Kendrick road? A. Yes, sir.

Q. Does that old road stop there? A. No, sir; it goes right straight along over there, here, in that place somewhere [showing].

Q. Where does that old road extend that is marked out here [showing]? A. It goes from this road here [showing].

Q. Does it go over to the spring that you have described? A. Yes, sir.

Q. Is that well-defined path a continuation of the old wood road from the spring to the Crittenden road? A. I don't understand you.

Q. You say that old wood road runs to the spring? A. Runs right through from this road over onto the other road.

Q. Doesn't it have the appearance of a road there now, or does it have the appearance of a road there now? A. It is growed up with quite a little small brush; it isn't much more now than what they call a path.

Q. Looks like a path? A. Yes, sir.

Q. Now, do you remember testifying here in regard to the path that led down from the Crittenden road to where the body was found?

A. Yes, sir.

Q. Does that path continue beyond where the body was found?

A. No, sir.

Q. Does that path lead across the brook? A. No, sir.

Q. When did you examine the ground? A. Last night — last evening.

Q. Before dark? A. Six o'clock.

[Cross-examination waived.]

JOSEPH ATKINS — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Joseph Atkins.

Q. What is your age? A. Twenty-six.

Q. Where do you live? A. Buckland.

Q. Do you remember Friday night, January 8 last, the night before Mrs. McCloud's body was found? A. Yes, sir.

Q. What time did you leave your home that night? A. Well, about quarter to 7.

Q. Where did you go after you left your home? A. Over in Haller's pool room.

Q. What time did you get in there? A. About quarter to 7.

Q. How long did you stay there? A. I don't know how long.

Q. What time did you go home? A. About 9 o'clock.

Q. About 9 o'clock. Were you acquainted with John O'Neil? A. Yes, sir.

Q. While in the pool room that night, after you first came in there, if many of the people who were there departed? A. What?

Q. If many of the people who were in there went out while you were there at any one time? A. Yes, they had.

Q. Do you know for what purpose, of your own knowledge? A. No; I don't know what they went out for.

Q. Know they went out? A. They went out; that is all I know.

Q. About what time was that? A. Well, I should think it would be between half-past 7 and 8 o'clock that they went out.

Q. At what time did you see John O'Neil? A. He came in just before they went out.

- Q. He came in just before they went out? A. Yes, sir.
- Q. And they went out just after that? A. Yes, sir.
- Q. Or, were they just going out? A. Well, he had been in there a little while, and they went out.
- Q. What time would you place it you saw O'Neil in the pool room that night? A. Between half-past 7 and 8 o'clock.
- Q. You would not place it later than 8? A. No; not later than 8.
- Q. Would you place it nearer half-past 7? A. I couldn't say.
- Q. Sure you saw him there at that time? A. Yes, sir; I am pretty sure.
- Q. And it was at the time just before the boys went out of the pool room, those that had assembled there? A. Yes, sir; just before.

Cross-examination.

- Q. (by Mr. HAMMOND). Have you testified before? A. No, sir.
- Q. Were you called in the town hall at Buckland? A. Yes, sir.
- Q. Did I ask you questions there? A. Yes, sir.
- Q. Did you there state truthfully what you knew about this case?
- A. I did.
- Q. State all you knew about it? A. Yes, sir; I did.
- Q. Have you since then been interviewed by the State officers?
- A. What?
- Q. Have you since then been interviewed by the State officers? Have you seen the State officers, and have they talked with you about this? A. I don't understand.
- Q. The district police officers. Have you seen Major Hammond and talked with him? A. I have talked with him.
- Q. Have you seen Colonel Whitney? A. I have.
- Q. And have you seen Mr. Rhodes and talked with him? A. Yes, sir.
- Q. Did you tell any of those men you would tell a lie to help John O'Neil? A. No, sir.
- Q. Did you tell them on one occasion you had told a different story that day from what you had the day before, to them? A. What?
- Q. Did you tell them on any day that the story you told that day was different from what you had told before? A. Not that I can remember.
- Q. Didn't you tell them in substance that you knew you had told a lie about this case? A. No, sir.
- Q. Didn't you tell them in substance you intended to lie about it to help John O'Neil? A. No, sir.
- Q. Didn't you say in substance you were willing to lie about it to help John O'Neil? A. No, sir.
- Q. Didn't you tell them in substance that you had not truthfully told about the case? A. No, sir.

Q. Well, to come back now to the evening of Friday, what was the first you saw John O'Neil doing at the pool room? A. I see him come into the door.

Q. What did he say just as he came into that door? A. I didn't understand.

Q. What did he say about that team outside? A. What?

Q. Wasn't he talking about the team outside? A. Not when he first came in.

Q. What? A. Not when he first came in.

Q. Did you see him at the time he was calling about the team outside? A. I see him come inside.

Q. Did you see him when he called out that there was a team outside? A. Yes, I seen him then.

Q. Where were you then? A. I was there then.

Q. What time was that? A. I couldn't say what time it was.

Q. As nearly as you can tell? A. Well, probably after 8 o'clock that was.

Q. How much after 8 o'clock? A. I don't know.

Q. What? A. I don't know.

Q. State as nearly as you can. A. Well, I couldn't say, only it was after 8 o'clock; that is all.

Q. Do you mean to tell this jury that he had appeared in the pool room before that? A. Yes, sir; I see him before that.

Q. Well, when he came to the door and called out that there was a team ready, he called to Eddie Haller, did he? A. Called to Eddie Haller.

Q. Tell who were in the pool room at that time. A. I don't know.

Q. Name one. A. Well, Eddie Haller is all that I can remember.

Q. Well, name another. A. There might have been several others there, but I can't remember them.

Q. Haven't you been able to name them before, — haven't you said the two Hallers were there? A. Two Hallers?

Q. Yes. A. Not as I can remember.

Q. Haven't you said that William Shaw was there? A. I said he was there; yes.

Q. Haven't you said Billy Morrissey was there? A. Yes, Billy Morrissey was there.

Q. Edward Heathcote? A. Yes.

Q. Edward Joyce? A. Yes.

Q. Charles Woodward? A. Yes.

Q. Well, is it true that those men were there at the time he called out about the team? A. Yes, it is true.

Q. You now remember it? A. I now remember it; yes.

Q. Now, who else was there at that time when he was calling about the team? A. That is all I can remember.

Q. Do you fix the time how long previous to that he had been there before? A. What?

Q. How long before that do you say he was in there? A. How long before?

Q. Yes. A. I don't know just how long.

Q. Well, how long do you put it? A. Before it, probably half an hour.

Q. And whereabouts in the room were you? A. I couldn't say where; I was in there somewhere.

Q. Were you standing up, or sitting down? A. I was sitting down.

Q. Were you alone, or with some one? A. I was sitting down in a chair there.

Q. Were you with some one? A. No, I was alone.

Q. Was any one sitting near you? A. Not that I can remember.

Q. Was any other person sitting in the room? A. Yes, there was Eddie Haller.

Q. Well, now, go on and name the persons that were in the room, when you say John O'Neil first came in there. A. There was Eddie Haller in there.

Q. Yes. A. I think Christian Fritz was in there, too.

Q. Well, go on; name the third. A. That is all I can answer.

Q. How many were there in all? A. I don't know; I didn't count them.

Q. Well, as near as you can name them? A. I couldn't say.

Q. Were there four? A. I couldn't say.

Q. Was Louis Vice there? A. I don't remember.

Q. Can you name any man who was there beyond those you have named? A. No.

Q. Well, who are those you have named? A. I said Eddie Haller, and I think Christian Fritz was there.

Q. Will you swear to either of them? A. I will swear that Eddie Haller was there?

Q. Well, do you swear that Christian Fritz was there? A. I couldn't do that.

Q. Was any one playing any game? A. Not that I can remember.

Q. Was any one using the pool table at all? A. Not that I can remember.

Q. Were there five people in the room? A. I can't say.

Q. You say you were there. A. I was there.

Q. You say John O'Neil was there? A. Yes.

Q. You said Eddie Haller was there? A. Yes.

Q. You think Christian Fritz was there? A. Yes.

Q. Now, were there five people in that room? A. I don't know.

Q. Well, what is the best of your recollection about it? Do you think there were, or that there were not? A. I couldn't say.

Q. Have you any impression about it? A. What?

Q. Have you any idea about it, whether there was another man there? A. I don't remember whether there was or not; I couldn't say.

Q. Haven't you said that a good many men went out? A. Yes, I said a lot of them went out.

Q. Well, who were the men that went out? A. I don't know; I don't remember.

Q. You are pretty well acquainted over there? A. Yes, I am well acquainted.

Q. You go to the pool room most every night? A. Yes, sir.

Q. You know most everybody who frequents the pool room? A. Yes, sir.

Q. You said you understood yourself to be answering Mr. Dowlin that about the time John O'Neil came in a good many folks went out? A. Yes, sir.

Q. Well, now, I want the name of one person who went out. A. I can't name any; I have forgotten.

Q. Well, name one out of the number. A. I can't do it.

Q. How many men went out? A. I can't say that, either.

Q. What do you mean by a good many? Do you mean three or six or ten? A. I mean three or four.

Q. You think three or four persons went out just as John O'Neil came in? A. Just before, yes; just before he came in.

Q. So that he must have been close to the door? A. Who?

Q. John O'Neil. A. Yes, he just came to the door.

Q. Well, did he come in before they went out? A. Yes, a little while before.

Q. Didn't you say they went out before he came in? Haven't you just said they went out before he came? A. I said he came in, and they went out after he was in there a while.

Q. Oh, after he was in there a while? A. Yes.

Q. Which side did he come in there, the railroad side or the shed side? A. The railroad side.

Q. Which side did these men go out? A. On the shed side.

Q. Well, as you think of it, can't you name one? A. No, I can't name one.

Q. Was Homer Cudworth there? A. I don't know; I couldn't say.

Q. Was Frank Stemple there? A. I couldn't say.

Q. Did either of those men go out? A. I couldn't say.

Q. Can you name any man who went out before John O'Neil came in at the first time, as you say? A. No.

Q. Can you, by taking time to think, get any one of them? A. No, I can't get none of them.

Q. Can you, by taking time to think, say whether they went out before John O'Neil came in or after he came in? A. What?

Q. Do you say they went out before John O'Neil came in or after he came in? A. They went out before he was in there a while.

Q. Now, what were they doing when they came in, these four men who went out? A. They were sitting down there.

Q. Then were there eight men in the pool room when he came in? A. I couldn't say how many there was.

Q. Well, you have named four, have you not? A. I have.

Q. And you say there were four more whom you didn't know? A. What?

Q. Do you say that there were four more men there whom you didn't know? A. I say I don't know how many there was there.

Q. What did he do when he came in at half-past 8, first? A. Half-past 8?

Q. Yes. A. When was that?

Q. When he called out about the team. A. Oh, he said there was a team out there waiting for you.

Q. Can you say just what he said? A. Well, that is as near as I know what he said.

Q. Whom did he say it to? A. He said it to Eddie Haller.

Q. Well, what next? A. That is all I know.

Q. Well, what happened next? A. I don't know.

Q. Did he come in or stay out? A. I couldn't say that, either.

Q. Did he get into the pool room? A. Yes, he got in.

Q. Well, did he at that time come in or did he come in later? A. What time?

Q. When he called out to Eddie Haller, the team is ready. A. He came in the door.

Q. Well, did he stay there, or go out? A. I don't know.

Q. After he came in, did you see him do anything? A. No.

Q. During all the time he was there, after he came in, did you see him doing anything? A. No, I didn't see him doing nothing.

Q. Did you hear him saying anything? A. No, not that I could say.

Q. Did you hear him talking about money? A. No.

Q. Did you hear him talking about getting a team to go up to the dance? A. No.

Q. Did you see him show any money there? A. No, sir.

- Q. Did you hear him saying that he had got the tin? A. No, sir.
- Q. Did you take a drink with him? A. No, sir.
- Q. Did you see him treating other people? A. No, sir.
- Q. Did you know that he had liquor that night? A. I didn't know; no.
- Q. Did you know that he had a pint when he first came in? A. No, sir.
- Q. Did you know that he sent over to Woodward's for a pint? A. No, sir.
- Q. To the Shelburne Falls House for a pint? A. No, sir.
- Q. Did he ask you to drink at all that night? A. No, sir.
- Q. Haven't you said you were frequently accustomed to drink with him? A. Well, I was, yes; I have said that, yes.
- Q. Haven't you said that you drank often yourself? A. Yes, sir.
- Q. And that John drank often? A. Yes, sir.
- Q. And that you often drank together? A. Yes, sir.
- Q. Very often indeed? A. Not very often indeed; no.
- Q. And you were at the pool room most every night? A. Yes, sir.
- Q. And saw him there most every night? A. Yes, sir.
- Q. And drank with him very frequently? A. Not very frequently.
- Q. Haven't you said that? A. No; I said I had drank with him.
- Q. Well, haven't you said you drank with him very frequently? A. Not very frequently; no.
- Q. Quite often? A. Quite often.
- Q. Were you asked if you drank with him a good many times, and did you answer, "Yes, sir; quite often?" A. Yes, sir.
- Q. During all this evening you say he didn't give you a drink? A. No, sir.
- Q. Do you know where he went late that evening? A. No, sir.
- Q. Did you see him next day? A. Yes, sir.
- Q. When first on Saturday? A. When?
- Q. Yes. A. Met him in the morning.
- Q. When first in the morning? A. About the middle of the forenoon, I should say.
- Q. Where? A. Front of Jenks's store.
- Q. What happened there? A. Nothing.
- Q. Who were in your party? A. I don't remember who was there.
- Q. Well, can you remember any one else except that you and John O'Neil were together at Jenks's store? A. Yes; there was me and John O'Neil, Charles Woodward and John Haller.
- Q. What did you talk about? A. What did we talk about?
- Q. Yes. A. I don't know.
- Q. What? A. I don't know, now.
- Q. Did he tell you that Mrs. McCloud was dead? A. Yes.

Q. What did he say about it? A. He said Mrs. McCloud was dead.

Q. Well, what did he say about it? A. He said Mrs. McCloud was dead.

Q. Did he say his mother told him so? A. Something like that; yes.

Q. How long did you remain there? A. Where?

Q. At that place, at Jenks's store? A. Probably fifteen minutes.

Q. Did you have a drink? A. There? No.

Q. Did you move anywhere with John O'Neil after that? A. Yes, sir.

Q. Where? A. Went round by the hotel.

Q. Well, whereabouts, in front or the rear? A. In front.

Q. Who were there? A. I don't know.

Q. Any talk about Mrs. McCloud there? A. No.

Q. What were you doing there? A. Standing there.

Q. Did you get any liquor? A. Yes.

Q. Did you drink it? A. Yes, we went round back of Frost's barn and drank it.

Q. Who got the liquor? A. John Couard.

Q. At whose request? A. Mr. O'Neil's.

Q. Who paid for it? A. Mr. O'Neil, I suppose.

Q. Where was it sent for, to the Shelburne Falls House? A. Yes, sir.

Q. When you got the liquor, how much was there of it? A. There was a pint.

Q. Where did you go? A. Round back of Frost's barn.

Q. How many of you? A. Four.

Q. Name them. A. There was me, John O'Neil, Charles Woodward and John Couard.

Q. About what time did you go back of Frost's barn? A. Oh, I don't know what time it was.

Q. What did you do there? A. We drank the pint.

Q. Is that all you drank? Is that all? A. What?

Q. Is that all you drank? A. We drank, and then we got another one.

Q. What did you do with the second one? A. We drank that.

Q. What did you talk about? A. We talked about drinking it.

Q. Did John O'Neil talk about anything else? A. Not that I can remember now.

Q. Did he talk about a lost bill? A. I didn't hear him say nothing about it.

Q. Was he, at any time when you were with him, bragging about anything? A. What?

Q. Was he bragging about his having women? A. About his having women?

Q. Yes. A. Why, he spoke about it; yes.

Q. And he is accustomed to brag about it, haven't you said? A. Yes.

Q. Wasn't he bragging about it every time he was drunk? A. Not every time.

Q. Well, wasn't he accustomed? A. Yes.

Q. To speak of licentious things whenever he was in drink? A. Yes.

Q. Haven't you said that was his customary talk? A. Yes.

Q. That is true, isn't it? A. That is true.

Q. And were you talking about that that day, part of the time? A. I don't know, now; I can't say.

Q. How long did you stay there back of Frost's barn? A. Stayed there till two pints were drunk.

Q. Well, about what time was that by the clock? A. I don't know; I didn't have no clock.

Q. How near to noon was it? A. Might have been noon; I don't know; I can't say.

Q. Where did you go then? A. When?

Q. When you left Frost's barn? A. I went over in the pool room.

Q. Did any one go with you? A. No; I went over alone.

Q. Did you see John again? A. Yes.

Q. When? A. In the afternoon some time.

Q. What time? A. I don't know.

Q. Did you see him when he got Morrissey to change the ten? A. No, sir.

Q. Do you know about changing the ten? A. No, sir.

Q. Did he show you his money any time that day? A. No, sir.

Q. Did he tell you how much he had? A. No.

Q. Did you hear him talk about the ten-dollar bill? A. No, sir.

Q. Did you hear him say it was lost? A. No, sir.

Q. Did you hear him say the hobo got it? A. No, sir.

Q. Did you hear him say he found it in his top vest pocket? A. No, sir.

Q. Do you know anything about the money? A. No, sir.

ARCHIBALD D. FLOWER — *sworn*.

Q. (by Mr. BEER). What is your name? A. Archibald D. Flower.

Q. Where do you reside? A. Ashfield.

Q. How long have you resided there? A. Since 1862.

Q. What is your business? A. Flour and grain business.

Q. How long have you been engaged in that business? A. Since 1873.

Q. Do you know David Davis of Ashfield? A. Yes, sir, — or formerly of Ashfield.

Q. Do you know his reputation for truth and veracity in the community in which he has lived? A. Yes, sir.

Q. What is it? A. It is bad.

Cross-examination.

Q. (by Mr. KNOWLTON). Mr. Flower, did you know him before he was arrested for stealing chickens? Did you know him before that time? A. Yes, sir.

Q. Had you heard his reputation talked about before that time? A. Why, I knew of his general reputation; yes, sir.

Q. I mean his reputation as to telling the truth before that time? A. I don't know as I ever heard it talked about before then.

Q. Before that time. And what was that? A. I think that was last December, but I am not sure about the month.

EDWARD PAYSON ELDRIDGE — *sworn*.

Q. (by Mr. BEER). Your full name, Mr. Eldridge. A. Edward Payson Eldridge.

Q. Where do you reside? A. Ashfield.

Q. How long have you resided there? A. Ever since I was born, with the exception of a year or two.

Q. What is your business? A. Farmer.

Q. Do you know David Davis of Ashfield? A. Yes, sir.

Q. How long have you known him? A. Well, I cannot tell you, sir; I have known him ever since he was a boy; I couldn't state the number of years, sir.

Q. Do you know his general reputation for truth and veracity in the community in which he has lived? A. Poor.

Q. Please answer the question whether you know it or not. A. Yes, sir.

Q. Now, I will ask you what is it? A. I think I understand the question. Do you ask me whether it is good or bad? I don't know as I quite understand.

Q. I will repeat my question. Do you know the general reputation? SHELDON, J. He said he knew it.

Q. Now, what is it? A. It is poor.

Cross-examination.

Q. (by Mr. KNOWLTON). Mr. Eldridge, you were present when his case was tried, weren't you? A. No, sir.

Q. Weren't you a witness against him? A. This case?

Q. When his case for stealing chickens was tried? A. Oh, yes, sir.

Q. You were a witness against him, weren't you? A. Yes, sir.

Q. When was that? A. It was last fall; I think it was somewhere about Thanksgiving.

Q. That was in the district court? A. Yes, sir.

Q. There was no trial in this court, was there? A. I think not; I was summoned here to court; I don't know what for.

Q. Remember when you were summoned here before? A. I don't.

Q. You remember it was about April? A. I should think it was.

Q. It would be the next high court, after the district court? That would be in April. He was sentenced from this court, wasn't he? A. I think so.

Q. Had he been around Ashfield very much since he grew up before he stole the chickens? A. Oh, around there more or less; I couldn't say how much.

Q. Was your attention ever drawn to what people said about his telling the truth before he was arrested for stealing chickens? A. Yes, sir.

Q. When? A. I can't tell you.

Q. Tell anybody that said so? A. What?

Q. Before that time, who said he wouldn't tell the truth? A. Oh. I can't tell you who; his reputation was poor; that is all I know.

Q. Reputation for what? A. Well, he is called a rather bad boy; that is the most I know.

Q. Is that what you mean by reputation? A. Yes, sir.

Q. That is what you mean by it? A. Yes, sir.

CLARENCE B. GUILFORD — *sworn*.

Q. (by Mr. BEER). What is your full name? A. Clarence B. Guilford.

Q. Where do you reside? A. South Ashfield.

Q. What is your business? A. Farming.

Q. How long have you resided there? A. All my life.

Q. Do you know David Davis of Ashfield? A. Yes, sir.

Q. How long have you known him? A. Fifteen years, I think.

Q. Do you know his general reputation for truth and veracity in the community in which he has lived? A. It is bad, generally bad, — general opinion.

Cross-examination.

Q. (by Mr. KNOWLTON). What do you mean by bad, Mr. Guilford? A. Why, he is considered untruthful and dishonest.

Q. Dishonest? That is, he would steal? A. That is the report; he never stole anything from me.

Q. I am not talking about report. Well, he was arrested some time in the fall for stealing chickens? A. Yes, sir.

Q. Did you ever hear talk as to whether he would tell the truth or not before that? A. Yes, sir.

Q. Whom by? A. By the people in general.

Q. What have you heard any one say about him? A. I can't tell anything in particular.

Q. Cannot name anything in particular? A. No, sir.

Q. Did you ever hear it talked about before he was arrested, — whether he would tell the truth or not? A. Yes, sir.

Q. Can you tell by whom? They began to talk about it when he was arrested? A. Yes, sir.

Q. Before that time? A. Yes, sir.

Q. Tell whom you heard talking about it? A. Most everybody around town.

Q. Name one? A. Well, anybody that is around the stores evenings.

Q. Name one? A. Calvin Howes.

Q. What did he say? A. He said he didn't believe anything he said.

Q. When was it that he said that? A. I have heard him say it several times; he lived neighbor to him.

Q. When was that? A. Within the last year.

Q. That is since last July? A. Since a year ago last May.

Q. You heard him say he didn't believe anything he said? A. Yes, sir.

Q. And was a neighbor to him? A. Yes, sir.

WILLIAM WALLACE WHITNEY — *sworn*.

Q. (by Mr. BEER). What is your full name? A. William Wallace Whitney.

Q. Where do you live? A. South Ashfield.

Q. How long have you lived there? A. Eleven years.

Q. What is your business? A. Farmer.

Q. Do you know David Davis of Ashfield? A. I have heard of him, yes; I don't know him, not personally; I know of him.

Q. Do you know his general reputation for truth and veracity in the community in which he has lived? A. Bad.

Cross-examination.

Q. (by Mr. KNOWLTON). Who summoned you to court, Mr. Whitney? A. A gentleman I understood from North Adams, I think.

Q. Mr. Maloney? A. Yes, sir; I think that is the name.

Q. Do you know him at all, — I mean Davis. A. Not personally.

Q. You never knew him personally? A. No, I never knew him personally; I knew of him.

Q. How far do you live from him? A. Why, where his mother lived, I think is close to two miles.

Q. Had he been at home much? A. No, sir; not since I have been there; he has been there off and on.

Q. How long have you been there? A. Eleven years.

Q. And during that time he has not been at home much of any? A. Why, no, sir; not that I know of.

Q. Of course he hadn't been home long when he was arrested for stealing chickens, had he? A. I think not; I don't know.

Q. They didn't talk much about him when he was away, did they? A. No.

Q. Since he came back you heard this talk, I suppose? A. Yes, sir.

Q. About the time he got arrested? A. In that neighborhood.

Mr. BEER. Mr. Field, will you please produce the record?

Mr. KNOWLTON. He needn't go on the stand. Let him produce the record. I would like to have it appear that this is all the record there is.

Mr. DOWLIN. In this court?

Mr. KNOWLTON. I mean in this court.

Q. (by Mr. DOWLIN). Is this the record of the court?

Mr. FIELD. That is the record of the court.

Mr. KNOWLTON. We make no question of that.

Mr. BEER. The record of the conviction of David Davis.

[Record is introduced of conviction of larceny in a building, April 27, 1897, and sentenced to Massachusetts Reformatory.]

JOHN FLYNN — *sworn*.

Q. (by Mr. BEER). What is your name? A. John Flynn.

Q. Speak up, so the jury can hear. What is your age? A. Forty.

Q. Where do you live? A. Greenfield.

Q. On Washington's birthday, this last February, where were you? A. Franklin County jail.

Q. For what offence? A. Drunkenness.

Q. And were you in the workshop that day, of the jail? A. I was.

Q. Were the prisoners generally there? A. They were.

Q. Do you know David Davis? A. I do.

Q. Did David Davis have any conversation with you? A. He did.

Q. State what. A. He called me one side, and asked me what was the nationality of Jim Bowers.

Q. And resulting from that conversation, did you see him conversing with James Bowers? A. I did.

Q. Did you overhear the conversation between him and James Bowers? A. I did.

Q. State what it was. A. He asked Bowers if he thought it wouldn't be a pretty good scheme to put up a job on John O'Neil, to see if he couldn't get half time, provided he got sentenced.

Q. Did you or not hear any other conversation? A. He referred to a fellow by the name of Valitsky, who turned State's evidence against Jim Driscoll; he thought he could do the same thing.

Q. Did you see David Davis again that day? A. I did.

Q. Did you hear any conversation between David Davis and John O'Neil? A. Not at that time. In the afternoon Davis came to him and he says, "I don't see," he says, "if you prove where you got that money, but what you will come out all right."

Q. What did O'Neil say? A. O'Neil says, "I can prove that without any trouble," he says.

Q. Was there any further conversation between Davis and O'Neil? A. That is all I heard; it was about 3 o'clock in the afternoon.

Q. Were you in the workshop all that day? A. Yes, sir.

Q. Did you see O'Neil talking with Davis again during that day? A. I did not.

Mr. BEER. That is all.

Cross-examination.

Q. (by Mr. KNOWLTON). Who were present when he said that to O'Neil? A. James Bowers and myself, and there was one or two more sitting on the bench.

Q. Who were they? A. William Carroll, and I believe Mr. Wilbur.

Q. That all? A. That is all, to my memory.

Q. Can you tell again what he said? A. He asked James Bowers if he thought it wouldn't be a good scheme to put up a job on John O'Neil—

Q. I mean the talk with O'Neil. Who was present then? A. James Bowers and William Carroll, I think.

Q. Anybody else? A. I wouldn't be positive; I wouldn't want to say.

Q. That is all you remember? A. That is all, sir.

Q. James Carroll, you say? A. James Bowers.

Q. And Mr. Carroll? A. Yes, sir.

Q. What was it he said then? A. In the afternoon?

Q. Yes. A. He says, "They can't prove anything against you if you can prove where you got your money."

Q. Is that all? A. That is all I heard.

Q. That is all the talk you heard? A. Yes, sir.

Q. Between those two? Is that all? A. That is all.

Q. And the answer O'Neil made was, "I can prove where I got it, all right"? A. Yes.

Q. He didn't say where he got it? A. No, sir.

Q. Nothing more said? A. That is all I heard.

Q. What was it that you heard him say to Bowers in the workshop?

A. He says, "Wouldn't it be a pretty good scheme," he says, "if I could put up a job on O'Neil." He says, "Don't you suppose I could get out on half time?" He referred to a fellow named Valitsky who turned State's evidence on Driscoll. He says, "Valitsky expects to get out on half time, and I don't know but I can do the same."

Q. What did Bowers say? A. Bowers smiled. He says, "I think you have got enough to attend to your own case."

Q. Anything more said? A. That is all I heard.

Q. That was the 22d of February? A. Twenty-third, Monday morning.

Q. That was the holiday? A. Yes, sir.

Q. The holiday was Monday, instead of Sunday, I suppose? A. Yes, sir.

Q. Did you hear anything more said between them? A. That is all.

Q. Who is Bowers? A. He is a prisoner that was up there at the time.

Q. And you were a prisoner that was up there at the time? A. Yes, sir.

Q. Whom did you tell this to first? A. Who did I tell this to first?

Q. That is what I asked you. A. I just told my counsel there.

Q. Your counsel? A. The counsel there, I said.

Q. When did you tell them? A. The other night, last Friday evening.

Q. How did you happen to be up there? A. Well, there was some talk; Bowers was talking around.

Q. How did you happen to be up there in that room? A. I went up there.

Q. Who sent for you? A. Mr. Lawler, I believe.

Q. Is he a lawyer here in Greenfield? A. I believe he is.

Q. Was it in his office you were? A. It was.

Q. Who came for you? A. Oh, this fellow that drove a coupé, I believe it is.

Q. Would you know him if you saw him again? A. I would.

Q. Who talked with you when you got there? A. This gentleman here [indicating counsel].

Q. Anybody else? A. This gentleman here with the glasses.

Q. Anybody else? A. That is all.

Q. Who else was there? A. Jim Bowers.

Q. Jim Bowers was there when you got there? A. He was.

Q. Now, that was before David Davis was tried, — before he was sentenced, I mean, — he wasn't sentenced then, this February time, he wasn't sentenced when you had this talk? A. Yes, sir; of course he was sentenced.

Q. He had not been sentenced then, in February? A. No, sir.

Q. Waiting for trial, then? A. He was.

Q. And Valitsky was waiting for trial? A. Who?

Q. Valitsky, if that is his name. A. Yes, sir; he was waiting for trial.

Q. And I want you to tell again what it was he said to Bowers. A. He says, "Don't you suppose it would be a pretty good scheme if I could put something up on O'Neil," he says, "don't you suppose I could get out on half time?"

Q. What else? A. That is all I heard him say then.

Q. That is all? A. Then he says, "Valitsky expects to get out on half time for turning State's evidence on Driscoll." He was told so, he said, that he would get out on half time, and he was told he would be left out doors to work.

Q. That is, that is what Davis said? A. That is what Davis said.

Q. And Valitsky hadn't been tried then, either? A. I don't know.

Q. Do you know Schenck? A. I do.

Q. Did you have any talk with him? A. Oh, I used to talk with him off and on.

Q. Was he there then? A. He was.

Q. Was he joining in this talk? A. Not then.

Q. Was he in the afternoon when Davis asked O'Neil that question, when he said, "If you can account for the money, I don't see but you will get off," — was Schenck there then? A. No, sir.

Q. What? A. No, sir; not that time.

Q. Did you see Curtis around there? A. Curtis was sitting on the floor over in the other corner.

Q. Was he there when Davis had that talk with O'Neil? A. He was sitting a little ways off, probably ten or fifteen feet.

Q. He didn't join in the talk at all? A. No, sir.

Q. Did he join in the morning talk with Bowers? A. He did not.

Q. How many times have you been convicted? A. Three times.

Q. What for? A. For drunkenness.

Q. Anything else? A. I was accused of taking a dollar once.

Q. What have you been convicted for? A. Drunkenness.

Q. Have you been convicted of anything else? A. I was accused of taking a dollar once.

Q. Have you been convicted of anything else? A. No, sir.

Q. Do you mean that, — that you have not been convicted of anything else? A. I was accused of taking a dollar once.

Q. I don't ask you what you were accused of? A. That's all, that's all, that's all.

Q. You mean to say that you have not served a sentence for larceny from the person? A. I just told you I was convicted of taking a dollar once.

Q. Now, will you say that you were convicted of larceny from the person? A. I was once.

Mr. KNOWLTON. That is all.

JAMES BOWERS — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. James Bowers.

Q. What is your age? A. Forty-eight.

Q. Where do you live? A. Greenfield.

Q. Now, on Washington's Birthday, February last, where were you residing? A. Franklin County jail.

Q. And were you in the workshop on that day? A. Yes, sir.

Q. Did you see John O'Neil there on that day? A. Yes, sir.

Q. Did you see David Davis there on that day? A. Yes, sir.

Q. And did you see Mr. Flynn there on that day? A. Yes, sir.

Q. And William Carroll there? A. Yes, sir.

Q. Did you have any conversation with David Davis? A. He came up to me —

Q. Answer yes or no. A. Yes, sir.

Q. Now, will you state just what the conversation was, as near as you can remember, that you had with David Davis? A. He came up to me and said, "How would it be if we should put up something to go in and swear against O'Neil? Would it help our case?"

Q. Was there anything further said? A. He says — he said, "Davis says that Valitsky is going to get off easy if he swears against Driscoll."

Q. And did you have any further conversation with him? A. Nothing only that I told him, that he —

Q. What was your answer to it? A. I told him I thought he had enough to look after his own self, without interfering in O'Neil's case.

Q. Whether or not you saw O'Neil afterwards? A. Yes, sir.

Q. Whether or not you saw David Davis talking with O'Neil during the day? A. I did not; I didn't notice him talking with him.

Q. Whether or not you heard any conversation between O'Neil and David Davis? A. I don't think so.

Q. Whether or not you saw O'Neil by the binding bench that day in the workshop? A. Yes, sir.

Q. Who was present? A. Well, there was Mr. Carroll and Flynn, and probably a dozen around the bench, — a good many of the names I don't know that was in there.

Q. Did you see anything of Mr. Schenck around that bench? A. Oh, he was there; I don't know as he was there at the same time, but I see him through the day.

Q. Around the room? A. Yes, sir; and around up where the binding bench was.

Mr. DOWLIN. That is all.

Cross-examination.

Q. (by Mr. KNOWLTON). Do you know Davis? A. Yes, sir; I have known him, — I wasn't very well acquainted with him till he came up there.

Q. Were you under sentence then or just waiting trial? A. I was under sentence.

Q. For drunkenness? A. Yes, sir.

Q. How many times have you been sentenced for drunkenness? A. I couldn't say.

Q. Fifty? A. No, sir.

Q. Twenty-five? A. No, sir.

Q. Twenty? A. No, sir.

Q. Ten? A. No, sir; I have never been sentenced for drunkenness ten times.

Q. Haven't you been sentenced for drunkenness ten times? A. No, sir; I don't think so; I haven't kept track of it.

Q. You wouldn't swear to it? A. I would swear I have never served ten sentences.

Q. You didn't hear any more talk about that, did you? A. No, sir; that is all.

Q. That is all you heard; and when did you tell anybody about that? A. Oh, I don't know when it was; I mentioned it quite a number of times around.

Q. Whom did you tell first that has got anything to do with this case? A. Mr. Lawler, I think, came to me first.

Q. Came to you? A. Yes, sir.

Q. When? A. Last week Wednesday.

Q. What did you do then, last week, after he came to you? A. He asked me about it.

Q. What did you do after he talked with you? A. I didn't do nothing.

Q. Go up to his office? A. Yes, sir.

Q. When? A. Friday night, I think.

Q. Go with him? A. No, sir; I went up alone.

Q. How long were you there? A. Perhaps an hour.

Q. Who else was there? A. Mr. Flynn.

Q. Who else? A. Mr. Dowlin.

Q. Who else? A. This gentleman here; I don't know what his name is.

Q. Who was present when he asked you that question? A. There was Mr. Carroll and Mr. Flynn.

Q. Anybody else? A. Not that was standing right close by; not that I remember of.

Q. Who is Carroll? A. A gentleman that lives here in town.

Q. No doubt of it. Anybody else beside those people? A. No, sir; not that I remember of; I know we were the only three lives down here that was in there, and we were most always around together.

Re-direct Examination.

Q. (by Mr. DOWLIN). Before you came to Mr. Lawler's office, had you made any statements on the street about this subject?

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. He said in answer to your question that he had talked with other people in regard to it. Do you press the question?

Mr. DOWLIN. I do not understand the question has been answered.

Mr. PARKHURST. He hasn't said it in this court room.

Mr. KNOWLTON. He said he had talked to people around.

SHELDON, J. I heard his answer that he had talked about it with others, — told others about it.

Q. Were you in the court room and did you hear Davis testify? A. No, sir.

Q. How soon after court adjourned did you hear that Davis had testified as he had? A. Well, I couldn't say whether it was that same day or not.

Q. And after you heard of Davis's testimony, did you tell anybody about this?

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. Of what consequence is that?

Mr. DOWLIN. That is all.

WILLIAM J. CARROLL — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. My name is William J. Carroll.

Q. What is your age? A. I shall be thirty-seven the fifth day of next October.

Q. Where is your residence? A. Elm Street, Greenfield.

Q. Where were you on Washington's Birthday last? A. Franklin County jail.

Q. What for? A. Adultery.

Q. State whether or not you were in the workshop of the Franklin County jail? A. Yes, sir.

Q. And state whether or not you saw John O'Neil there? A. Yes, sir.

Q. Whether or not you saw David Davis there? A. Yes, sir.

Q. State whether or not you heard any conversation between John O'Neil and David Davis? A. I heard very little.

Q. Did you hear all the talk there was between them at the time you saw them? A. Yes, sir; I was with Mr. O'Neil at the time Davis came up.

Q. State what the conversation was, as near as you can remember between Mr. Davis and Mr. O'Neil. A. Well, I was sitting on the one end of the binder's bench with Mr. O'Neil, and there was Bowers and three or four others there. Davis came up to O'Neil. I think it was the first time he had spoken to him. He says, "I don't see what they are going to do with you; I don't see where they have any evidence against you, if you can prove where you got your money." O'Neil says, "I can prove where I got every dollar of it." Davis says, "Then I don't see where they have any case against you at all."

Q. Was there any further conversation there? A. No, sir.

Q. What did you and Mr. O'Neil do that day, if anything? A. Well, we played cards some; I was around with him all day.

Q. Did you have any conversation with him about his case in the presence of Bowers? A. No, sir.

Q. And did you see — A. After Davis went away, at that time there was a man in there by the name of Kelley came up to Mr. O'Neil and says — [Objected to.]

Q. Never mind. State whether or not you saw Davis speak to O'Neil again that day? A. No, sir; he did not.

Q. State whether or not you should have seen Davis speak to him if he had? [Objected to.]

SHELDON, J. He may describe his own and Davis's and O'Neil's position, but cannot answer the question first put.

Q. State where O'Neil and Davis were when you heard this conversation? A. I was sitting on the bench with O'Neil, and Davis was standing up.

Q. From what direction did Davis approach? A. He came from the west end of the shop; we were on the west end.

Q. Did you notice whom he was talking with before he came towards you? A. Davis?

Q. Yes. A. No, sir; he came from the other side of the room.

Q. How long did Davis stop there at the bench? A. Well, I don't think he stopped there more than three minutes, perhaps five; not more than that.

Q. What bench was it? A. Binder's bench; in the west corner of the shop.

Q. How long that day did the prisoners have the liberty of being in that room, Mr. Carroll? A. I think we went in at 8 o'clock and out at 11 in the forenoon, and in at 2 o'clock in the afternoon and out at 5.

Q. What time did this conversation occur? In the forenoon or afternoon? A. I couldn't say as to that.

Q. But you were in there from 8 to 11 in the forenoon, and from 2 to 5 in the afternoon? A. Yes, sir.

Q. And you never saw Davis speak to O'Neil again, did you, only that once you have described? A. No, sir.

Q. How large a room is it? A. I should say it was very near as large as this.

Q. Did you see O'Neil around the binding bench after that time? A. We were there most all day.

Q. What were you doing there? A. Well, we played cards some of the time, and smoking.

Cross-examination.

Q. (by Mr. KNOWLTON). How many were there in the room that day? A. I do not know exactly, but between sixty and seventy.

Q. Were you a particular friend of O'Neil's? A. No, sir; never saw him before in my life.

Q. That is the first time you had seen him that day? A. That is the first time I saw him, and the way I happened to see him—

Q. I didn't ask that. That is the first time you remember to have seen him? A. Yes, sir.

Q. You did know some people in there, I suppose? A. A few, very few.

Q. How many did you know? A. Not more than three or four I had personal acquaintance with outside.

Q. Where was Bowers when he asked him this question in the afternoon? A. Bowers was sitting on the binder's bench.

Q. How near to O'Neil? A. Well, I think perhaps he was two feet from him.

Q. What was he doing? A. Sitting there smoking.

Q. Where he could hear if he wanted to? A. Yes, sir.

Q. He was not hard of hearing, so far as you know? A. No, sir.

Q. You think he heard it? A. I am very positive he heard it.

Q. Heard it all? A. Yes, sir.

Q. He was not talking with anybody else? A. No, sir.

Q. Were you with him any part of the day in the morning — with Bowers? A. That same day in the morning?

Q. Yes. A. No, sir.

Q. You were not with him in the morning at all? A. Until we went into the shop.

Q. I mean after you had your liberty in the shop? A. Yes, sir; Bowers was with us most all day.

Q. Well, I suppose most everybody knew what everybody else was in there for, didn't they? You talked about your cases more or less? A. Very little.

Q. Don't they talk about their cases when they get in there? A. Not but very little.

Q. Don't say what they are in there for? A. They do if anybody asks them, I suppose.

Q. Don't talk about their case? A. Not but very little.

Q. Did you talk with O'Neil about his case? A. No, sir; I did not.

Q. All day long? A. No.

Q. You say you were a stranger to him until that day? A. I was a stranger to him; yes, sir.

WILLIAM F. MOYES — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. William F. Moyes.

Q. Where do you live? A. In Lawrence.

Q. What is your business there? A. I am the clerk of the police court.

Q. Have you one of the books of records of the police court of the city of Lawrence? A. Yes, sir.

Q. Have you any record there of conviction against one David Davis? A. Yes, sir.

Q. Will you read them, please? A. No. 872 of the year 1891; defendant's name was David C. Davis.

Q. Yes, sir. A. The charge was larceny, larceny of a box of cigars of the value of \$10. The plea was guilty, and the sentence was four months in the house of correction.

Q. What house of correction? A. At Lawrence. He was committed on the twelfth day of May, 1891. Another record, No. 1741

of the same year ; name of defendant, David Davis ; charge, larceny, — larceny of certain promissory notes and coins current as money, the property of one Simon Goldberg, on the twentieth day of October of the same year ; the plea was not guilty. After trial, was sentenced to Massachusetts Reformatory at Concord and committed on the thirty-first day of October of the same year.

Q. Have you stated the amount of coin larceny that is charged in the complaint? A. All of the value of twenty-five dollars.

Q. Are those all the records that you have? A. Those are all, sir.

Q. Were you clerk of the court at that time? A. No, sir ; I was not.

[No cross-examination.]

CLIFTON L. FIELD (*Clerk of Courts for Franklin County*) — *not sworn*.

Mr. DOWLIN. Mr. Clerk, have you the record against Shank or Schenck?

[The clerk produced a record against Richard H. Schenck and Raymond Burian, and after the same had been partly read —]

SHELDON, J. Is it necessary to read it?

Mr. KNOWLTON. We won't trouble you with identity at all, and, as far as we are concerned, you needn't read all the details.

Mr. DOWLIN. Well, I prefer to read it.

Mr. PARKHURST. You can read what he is charged with, and the date of the sentence.

THE CLERK. An indictment against Richard H. Schenck and Raymond Burian, August term, 1889. Charge, breaking and entering, larceny in the building in the night time ; and the verdict was guilty, against both defendants, Aug. 19, 1889. Eighteen months in the house of correction was the sentence, the same day. And August term, 1889, a case against the same parties, Richard Schenck and Raymond Burian ; breaking and entering and larceny in a building in the night time. The jury found a verdict of guilty against both defendants ; sentence of twelve months each, to begin on the expiration of the sentence No. 99 (that was the one just read), in the house of correction. And the last sitting of the court, two indictments, the first against Richard H. Schenck, breaking and entering and larceny, was the charge ; sentence, April 28, 1897, State Prison, not less than three years nor more than five, one day solitary. And the same date he was indicted on an indictment for larceny, simple larceny ; there was no sentence on that.

Mr. KNOWLTON. He was not sentenced on that case. I wish to have justice done to Schenck.

Mr. BEER. What was the verdict?

THE CLERK. It was placed on file.

SHELDON, J. It has been decided that that is not conviction.

Mr. PARKHURST. There has been no judgment of the court, I suppose?

SHELDON, J. No.

THE CLERK. The minutes, your Honor, in the case, say, "Lay on file. This case and No. 19 have been tried together, and punishment imposed in the latter case."

SHELDON, J. Well, that is putting it on file.

CHARLES S. RICHARDSON — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Charles S. Richardson.

Q. Where is your home? A. Greenfield.

Q. What is your business? A. Jailer.

Q. Jailer of the Franklin County jail? A. Yes, sir; and master of the house of correction.

Q. Are you acquainted with Richard Schenck? A. I am, sir.

Q. And whether or not he has been under your custody in the jail as jailer? A. Yes, sir.

Q. Whether or not he has broken jail? A. He did, sir.

Mr. HAMMOND. I pray the judgment of the court.

SHELDON, J. That is not competent unless you expect to show the record of the conviction.

Mr. HAMMOND. There is no record.

Mr. DOWLIN. Well, as I understand it — without we expect to show the record of conviction?

SHELDON, J. You cannot prove a specific offence for the purpose of affecting credibility, except by the conviction.

Mr. DOWLIN. Well, all right.

Mr. PARKHURST. That is all.

Mr. DOWLIN. We have nothing further to ask.

Mr. HAMMOND. I have nothing.

MASON, C. J. We will take a recess; the officers may be sworn.

Recess to 2.30 P.M.

AFTERNOON SESSION.

The roll of the jury was called, and the prisoner answered to his name.

Marina Davis was called, and, not appearing, was defaulted.

JAMES HART — *sworn*.

Q. (by Mr. BEER). What is your name? A. James Hart.

Q. Where do you reside? A. Buckland.

Q. Do you know Frank Stemple? A. Yes, sir.

Q. Do you remember having any conversation or conversations with him in respect to the whereabouts of the defendant, John O'Neil?

A. He told me in the morning — [Objected to.]

Q. Wait a moment. I asked if you recollected any conversation?

A. Yes, sir.

Q. When was it? A. It was Tuesday morning, when O'Neil was arrested.

Q. What did he tell you? [Objected to.]

Mr. BEER. This Frank Stemple has been a witness for the Commonwealth, and he denied that he told Mr. Hart —

Mr. KNOWLTON. Where is it?

Mr. BEER. The fifth day's proceedings, page 362.

SHELDON, J. I do not understand objection is actually made.

Mr. KNOWLTON. No, sir; I only want to see what it is.

SHELDON, J. If there is any contradiction of any material part of his testimony, you have the right to contradict him.

Mr. KNOWLTON. I have got it, it is 362. Yes, I have got it; I don't object.

Q. (by Mr. DOWLIN). What did he tell you then? A. He asked me if I see O'Neil in the pool room that night; I said I had not.

Q. Anything more? A. He wanted to know what time I went there. I said about half-past 7, and left there at five minutes past 8. He said he see him in there about 7, he thought.

Q. About 7, he thought? A. He told me in the morning, O'Neil was with him.

Q. About 7 of what day? A. Tuesday morning.

Q. No, but what day did he refer to when he said he saw him in the pool room? A. That night, Friday night, — the night that the crime was committed.

Q. Friday night, the 8th of January? A. Friday night, the 8th of January.

Q. Have you had any subsequent conversation with him in respect to the same subject? A. No, sir.

Cross-examination.

Q. (by Mr. KNOWLTON). Mr. Hart, were you in the pool room yourself? A. Yes, sir.

Q. What time did you get there? A. About twenty minutes to 8.

Q. How long did you stay there? A. I stayed there till five minutes past 8.

Q. You didn't see anything of O'Neil there? A. No, sir.

Mr. KNOWLTON. That is all.

CATHERINE O'NEIL — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Catherine O'Neil.

Q. Are you the wife of John O'Neil, Sr.? A. I am.

Q. Are you the mother of John O'Neil? A. I am.

Q. Here in this court? A. I am.

Q. Do you remember Friday, January 8, the night before Mrs. McCloud's body was found? A. I do.

Q. When did you first see your son after Friday noon-time? A. I saw him between ten minutes and quarter past 6.

Q. And where? A. In my dining room.

Q. Had you finished eating your supper when he came home? A. I had not.

Q. Had any of your family eaten their supper? A. No, sir.

Q. How many children have you? A. I have thirteen living.

Q. Was your husband at home that night? A. He was.

Q. Where does your daughter Rose work? A. In the peg shop.

Q. What peg shop? A. Mr. Foster's.

Q. Where does your son Tom work? A. Works in the gimlet shop, Mr. Goodell's.

Q. Where does your daughter Minnie work? A. Shelburne Falls House.

Q. Where does your daughter Katie work? A. Shelburne Falls House, — did then.

Q. What was your daughter Maggie doing then? A. She was around playing, round the yard.

Q. Where did your daughter Nellie work? A. She worked then in North Adams.

Q. When you say that you saw your son John in the dining room, between ten minutes and quarter past 6, had your daughter Rose come home? A. She had not.

Q. How soon after you saw him did Rose come in? A. In a very few minutes.

Q. Had Tommy come home? A. I think Tommy came right in after Rose.

Q. Who ate supper, if any one? Did your son John have his supper? A. He had his supper with his sister Rose and Thomas.

Q. Who ate supper, if any one, with your son John? A. Rose and Thomas.

Q. Rose and Thomas, did I understand you? A. Yes, sir.

Q. What was it? A. We had baked beans and bread and butter and pie.

Q. How long were you eating supper? A. I should think about fifteen minutes.

Q. If you remember any conversation that occurred between your daughter Rose and your son John while they were eating supper, please state it. A. I do. John asked Rose if she was going to the dance. She told him she didn't think she would. She asked him if he was going.

Mr. KNOWLTON. That is objected to, as incompetent.

SHELDON, J. How is it competent?

Mr. DOWLIN. To show the condition of the prisoner at that time.

SHELDON, J. I don't see how it can be admitted.

Mr. PARKHURST. I suggest to your Honor it might be competent for another purpose. The government has inquired of one of the witnesses for the defence as to the conversation at the supper table that night; therefore, it seems proper that this witness should be inquired of.

SHELDON, J. Was not that a question of cross-examination, as to whether certain specific things were spoken of at the supper table that night? That is my memory. It was in cross-examination.

Mr. PARKHURST. I cannot remember exactly. The whole question of what was said between Rose, Thomas and the prisoner was gone into by the government.

SHELDON, J. My own recollection is that the specific question was put as to whether this money had been spoken of in his hearing.

Mr. DOWLIN. That was Saturday, relating to the money, on Saturday afternoon, cross-examination.

SHELDON, J. Yes, it was. I don't remember that there was any question asked about what took place at supper on Friday.

Mr. DOWLIN. I think there was.

SHELDON, J. It is easy to see.

Mr. PARKHURST. The question that I had in mind was the general one, "Did John talk with you any?" That was at the supper table.

SHELDON, J. That does not open the question of what he said. Of course, if you wish to show what his condition was as to sobriety, for example, that you can show; but that does not make it competent to show what conversation he had with them.

Q. (by Mr. DOWLIN). Did you notice your son when he came into the dining room? A. I did.

Q. Could you state what his condition was? A. Yes, sir.

Q. Please state it. A. He was very much under the influence of liquor.

Q. How was your attention attracted to that fact? A. Why, he staggered.

Q. Did you notice whether John, Rose or Thomas left the table first? A. Rose left the table first.

Q. Did you notice where Rose went? A. She went up stairs.

Q. Did you see Rose in the dining room again? A. I did.

Q. When you saw Rose in the dining room again, where was your son John? A. He was in the dining room.

Q. After Rose came into the dining room, if anything, what did you see your son John do? A. Go up to the stove and light his pipe.

Q. What became of him after he lit his pipe, if you remember? A. He went out through the dining room again, out into the hall.

Q. Now, will you describe to the jury the best that you can, which way does your house face, the front of the house? Does it front Green Street? Does the front door open on Green Street? A. Yes, sir.

Q. Now, calling that Green Street there [showing sketch], does the front door of your house open directly towards Green Street, or to the right, at right angles with Green Street? A. To the right

Q. And is there any piazza on the front of your house? A. There is not; only a step.

Q. Is there anything on the front of your house? A. Yes, sir; three steps going down.

Q. That is in the yard, isn't it? A. Coming down from the front door.

Q. Is there any opening on the front of your house, — doorway in the front of your house? A. No, sir.

Q. And which way does the front door open, — north, east, south or west? A. North, I think.

Q. And when you enter the front door, what is the first place that you step into, — does it open into a room? A. Yes, sir; into the sitting room.

Q. Does the front door open into the sitting room? A. No, the front door opens into the hall.

Q. And what doors open from the front hall? A. Into the sitting room and dining room.

Q. And is there any other method of going away from the front hall? A. Going up stairs.

Q. And when you land on the landing up stairs, how many rooms are there there? A. Four.

Q. Where did the dining table sit that night? A. In the middle of the floor.

Q. In what room? A. In the dining room.

Q. Can you see from the dining room to the kitchen? A. You can.

Q. State whether or not your son left the dining room prior to the time of his finally leaving the house when you last saw him on Friday night? A. He did; he left the room, as I thought, he had gone up to go to bed; I looked and see his coat hung there still. I says, "He hasn't gone to bed."

Q. No matter what your reflections were. State whether or not you afterwards saw him in the dining room again? A. I did.

Q. State how long he was gone, to the best of your knowledge, as you can remember it? A. I should think about five minutes, — four or five minutes.

Q. State, to your best knowledge and belief, the time that your son finally left after you saw him standing by the kitchen stove? A. About twenty minutes to 7, between twenty-five and twenty minutes of 7, I should think.

Q. How do you know that it was that time? A. Well, I heard Rose —

Q. Well, was there anything that attracted your attention? A. Rose spoke and says, "I have got to get —"

Q. Never mind. Resulting from something that you heard said, was the time fixed in your mind? A. It was.

Q. And what was the time that was fixed in your mind? A. Rose spoke —

Q. No, don't tell anything that Rose said, but give us the best impression that you have got of the time that was fixed in your mind? What time was it? A. I think it was about twenty minutes of 7, between twenty and twenty-five minutes to 7.

Q. Now, do you remember who went out first, John or Rose? A. John.

Q. How long would you think it was before Rose went out after John; Whether or not Rose went out that evening? A. Rose went out in a very few minutes after John.

Q. When did you next see Rose? A. After she had gone out?

Q. Yes. A. About 9 o'clock.

Q. Was Maggie in the house at all? A. Came in once and ran out again.

Q. Where was Maggie when John went out? A. Out in the yard.

Q. How soon after did Maggie come in then, when you saw your son John go out? A. Two or three minutes after John had gone out.

Q. State what was the next time that you saw your son John after he went out? A. About 1 o'clock in the morning.

Q. About 1 o'clock in the morning? A. Yes, sir.

Q. And what was his condition then? A. He was drunk.

Q. Did you let him into the house? A. I did.

Q. Did you have any conversation with him then? A. I did.

Q. What did he do after that? A. Well, he walked over to the glass and looked at himself. [The witness added, "And asked me if I had heard that fellow out in the yard."]

Mr. KNOWLTON. That last, I suppose, is not in.

Mr. DOWLIN. I asked what he did.

SHeldon, J. Yes; the stenographer need not take, then, the last, what he said.

Q. What did you say he did, if anything? A. He stood and looked in the glass.

Q. State whether or not there was any conversation between you and him after he had finished looking in the glass.

Mr. PARKHURST. You need not state the conversation, but the fact. A. There was.

Q. How long after that did he leave you? A. About ten minutes.

Q. Where did he go? A. Went to bed.

Q. When was the next time that you saw John? A. About half-past 8 in the morning.

Q. Did he eat breakfast? A. He did; he eat some.

Q. Did you get his breakfast for him? A. I did.

Q. What occurred after he ate his breakfast, if anything? A. He took his saw and went out sawing wood.

Q. When was the first information that you received of the finding of the body of Mrs. McCloud? A. That morning, right after John went out sawing wood.

Q. Of whom did you receive it? A. Mary Wall.

Q. And by reason of that information—

Mr. KNOWLTON. I do not object to any talk now.

Mr. DOWLIN. What?

Mr. KNOWLTON. I do not object to this part. I will ask it. I asked you to keep out any talk. I do not object to this part now.

Q. (by Mr. DOWLIN). State how long he was out there sawing wood. A. I think he was out there fifteen minutes then.

Q. What did you see him do, if anything, after he came in? A. Put on his coat, fix his hair and went down street, I suppose,—went out.

Q. Was it by any request of yours that he went down street? A. Yes, sir.

Q. And when did you next see him? A. About 1 o'clock that afternoon.

Q. And what was his condition then? A. Drunk.

Q. What did he do then? A. He asked me if I had any dinner for him.

Q. In consequence of what was said, what did you do, if anything?

A. I told him to go to the buttry and eat ; that the table was cleared off.

Q. Did you see him go into the buttry? A. I did.

Q. Did you see him come out? A. Yes, sir.

Q. And how drunk was he? A. Well, he was that drunk that he staggered around.

Q. Did you then have any conversation with him? A. I did not.

Q. Did you notice where he went afterwards? A. I did.

Q. Where? A. He went straight down Green Street.

Q. How long was he at home that time? A. Why, I should think he stayed home about three-quarters of an hour.

Q. And when was the next time that you saw him? A. Well, very near half-past 7.

Q. And where was the first place you saw him then? A. Laying in a wagon.

Q. And in whose wagon? A. Eddie Heathcott and Eddie Somers brought him home.

Q. What was done with him after you saw him lying in the wagon? A. He was brought in and laid on the lounge.

Q. What was his condition? A. Drunk.

Q. Did you do anything for him in that condition? If so, state what. A. I did. They wanted me to call for the doctor. I says, "No, I have seen him in this way before."

Q. No ; state what you did. A. I made a mustard paste and put it on him.

Q. Where did you put it? A. Over his heart.

Q. Had you ever seen him in that condition before? A. I had.

Q. Did you ever use the same remedies before? A. I did.

Q. Did you send for a doctor? A. I did ; the girls went for the doctor.

Q. Did I understand you to say that you sent for the doctor? A. Yes, sir.

Q. What did you see when he came home Friday night, and was looking in the glass, — did you notice any wound on his head? A. No. [Rest of answer ordered not to be taken].

Q. Did you see it the next day? A. No, sir.

Q. Where did you say your daughter Nellie worked at that time? A. North Adams.

Q. Was she at home at that time? A. She was not.

Q. Was your daughter Minnie at home? A. No, sir.

Q. Did your daughter Minnie keep any personal effects at home? A. She did.

Q. What were they?

Mr. KNOWLTON. I pray your Honor's judgment, unless she herself knows.

SHELDON, J. Do you know whether your daughter had any effects, from your knowledge?

THE WITNESS. Yes, sir.

SHELDON, J. Or is it from what she told you, or in part from what she told you?

THE WITNESS. No; I don't know as I know of anything, only what she told me.

SHELDON, J. Then it is incompetent, of course.

Q. (by Mr. DOWLIN). Have you seen it? A. Yes, sir; I have seen her trunk, of course.

Q. Have you seen anything else of hers there at home? A. Yes, sir; a good many things.

Q. Well, do you know of your own knowledge that she had personal effects at home?

Mr. KNOWLTON. I pray your Honor's judgment. I think the question should be confined to what she saw.

SHELDON, J. The witness has said, in answer to my question, that she did not know of anything, except what she had been told. You may ask her concerning anything, if you think it important, that she saw.

Q. (by Mr. DOWLIN). What things that belonged to your daughter Minnie did you see there at home? A. I saw her trunk there.

Q. What else? A. Why, a good many things.

Q. State them, the best you can. A. Do you mean in her trunk?

Q. No, I mean anything around the house that belonged to her.

A. Well, I couldn't say anything else, only that she kept her trunk to home, and the key of it.

Q. Did she keep clothes at home? A. Some clothes that she didn't wear very much she kept to home.

Q. Where was this trunk kept? A. At the head of the stairs.

Q. Do you know where the key of the trunk was kept? A. I do.

Q. Do you mean, by stating at the head of the stairs, do you mean in the hallway at the head of the stairs? A. Yes, sir.

Q. Would you recognize the key to that trunk if you should see it? A. Yes, sir; I think I would.

Q. Is that [showing] the key of the trunk? A. Yes, sir.

Q. Where was it kept?

Mr. KNOWLTON. I think she ought to be confined to what she saw.

Q. (by Mr. DOWLIN). Where did you see the key of that trunk?

A. In a mug, where she kept it.

Q. Would you recognize the mug if you saw it? A. Yes, sir.

Q. [Showing.] A. Yes, sir; that is the mug.

Q. Where was the mug kept? [Objected to.]

Q. Where did you see the mug? A. In the cupboard of the sitting room.

Q. What cupboard? A. In the sitting room.

Q. Whereabouts in the cupboard? A. The second shelf from the top.

Q. How long, to your knowledge, has that key been kept in that mug on the second shelf in the cupboard in your home?

SHELDON, J. You are asked from your own knowledge, that is, from what you saw, not from what anybody told you.

Q. (by Mr. DOWLIN). From your own knowledge, state when you saw it first and when you saw it last. A. It has been kept there three or four years.

Q. Describe the cupboard. Is it an open cupboard? A. A door closes on it.

Q. What side of the room does the cupboard open, the one next the hall, or next to the street, or next to the front door? A. Just as you go in the front door.

Q. Just as you go in the front door, do you mean, into the hallway? A. Go in from the hallway, — it is on the left hand as you go in.

Q. On the left hand as you go in. When, before Friday night, January 8, was the last time that your daughter Nellie was at home? A. Christmas.

Q. To your own knowledge has that trunk that belonged to Minnie ever been used by any one else?

Mr. KNOWLTON. Wait a moment. I object to the question.

SHELDON, J. You may get the extent of her knowledge on the subject.

Q. (by Mr. DOWLIN). Have you ever seen any one else go to that trunk excepting Minnie? A. Yes, sir.

Q. If so, state who. A. Nellie.

Q. Have you ever seen Nellie do anything while at that trunk? If so, state what. A. I have.

Q. What? A. I have seen her take a pocketbook out of it.

Q. Did the pocketbook to your knowledge, belong to Nellie? A. It did.

Q. And to your own knowledge have you ever seen Nellie do anything with that pocketbook? A. I have; Christmas I saw her put money in it.

Q. In what room was she at Christmas time when you saw her put money in it? A. In the sitting room.

Q. And who was present in the room? A. Rose, me, John and Nellie and me.

Q. Did you see Nellie do anything with the key of the trunk at Christmas time? If so, state what, and state fully. A. I saw Rose go and get that key for Nellie.

Q. And what did you see Nellie do? A. She gave the key then to Rose, and says, "Go up stairs and bring me down my wallet."

Mr. KNOWLTON. Wait a minute.

Mr. DOWLIN. No, not what she said; strike that out.

Q. And after Rose received that key, did you see her leave the room? A. I did.

Q. And did she come back again? A. She did.

Q. What did she bring with her, if anything? A. She brought the pocketbook.

Q. Whose pocketbook? A. Nellie's.

Mr. KNOWLTON. Did you get the date of this? What day was this?

Mr. DOWLIN. Christmas Day.

Q. What part of the day was this on Christmas Day? A. About 3 o'clock in the afternoon, I should think.

Q. Was it after you had had your dinner? A. Yes, sir.

Q. Were your daughters all at home Christmas Day? A. Yes, sir.

Q. And what did you see Nellie do with the pocketbook after she received it from Rose? A. She took money from another pocketbook and placed it in that.

Q. And what did you see her do with the pocketbook after that, if anything? A. She left the room; I don't know what she did.

Q. And when was the next time that you saw your daughter Nellie in Shelburne Falls? A. After the arrest of my son.

Q. Did she then remain at home? A. No, she went back again in a few days.

Q. Did you see what denominations, if any, the money was that Nellie put in the pocketbook at Christmas time? A. I did not.

Q. Was your son John in the room, so that he could have seen Nellie put this money in the pocketbook? A. He was; he sat right on the organ stool.

Q. Would you recognize the pocketbook if you saw it? A. I would.

Q. [Handing witness pocketbook.] Take it and look at it. A. Yes, sir; that is the pocketbook.

Q. Do you know how much was in it at Christmas time, if any? A. I do not.

Q. The last that you saw of the pocketbook on Christmas Day was when Nellie left the room with it, wasn't it? A. Yes, sir.

Q. When was the next time that you saw the pocketbook? A. Oh, in February, I think.

Q. Do you remember what time in February? A. Well, I should think about the 8th or 9th of February, when she was down.

Q. And who showed it to you? A. Nellie.

Q. Now, you say you have seen this trunk a good many times? A. Yes, sir.

Q. What kind of a trunk was it? A. Oh, ordinary trunk; three compartments in it.

Q. About how big? A. About so long.

Q. About as long as that? A. [Witness indicates length.]

Q. Describe it on the rail here somewhere. As long as that? A. Longer; it is a large trunk.

Q. How many trays has it got? A. Two.

Q. You mean a tray that sets down in, and a compartment? A. Yes, compartment that opens.

Q. Lid lift up off the trunk in an ordinary manner? A. Yes, sir.

Cross-examination.

Q. (by Mr. KNOWLTON). Where is the trunk now? A. It is in the same place.

Q. Was it in the same place when the jury were there? A. Yes, sir.

Q. And was the mug there then? A. Yes, sir.

Q. And the key in it? A. Yes, sir.

Q. Pocketbook in it? A. Yes, sir.

Q. All there that day? A. All there.

Mr. KNOWLTON. I meant to have said I would withdraw, before I began, the objection to the inquiry about what he said that night about the wound,—the talk he had that night. I suppose I should do that before I proceed to ask about it.

Mr. PARKHURST. Talk at supper table?

Mr. KNOWLTON. At 1 o'clock in the morning. I am proposing to proceed to it. You have the first right to do it, if you want to; otherwise, I shall be shut out by my own objection.

Q. (by Mr. KNOWLTON). I will ask you now when he came home at 1 o'clock you say you did not see a wound, but he told you about it? A. Yes, sir.

Q. What did he say about it? A. He said his head was sore.

Q. Say anything more? A. No, sir; not about that.

Q. What was it that the little Wall girl told you that morning? A. She told me Mrs. McCloud was dead.

Q. Anything more? A. She lay up in the bushes dead.

Q. Of course you were very much shocked? A. Yes, I was.

Q. And you were washing at that time? A. I was; I was hanging out clothes.

Q. Up in the bushes dead. Of course you knew where she lived? A. I did.

Q. Up in the bushes would mean up somewhere between her house and your house, you understood? A. Yes, sir.

Q. The first thing you did was to go out and tell John, wasn't it? A. No, sir; I went in and told my husband.

Q. Then did you go out and tell John? A. Yes, sir; after a few minutes.

Q. What did you say to John? A. I said, "Johnny, did you hear that terrible thing?" He looks up and says, "What terrible thing?" I says, "Mrs. McCloud is dead." "Who is Mrs. McCloud?" he says. I said, "Mr. Crittenden's daughter; that woman I washed for so long."

Q. Anything else? A. Then I came in, and I think I stepped in a neighbor's house and told it.

Q. Well, didn't you tell him to do anything? A. Not just then. I come in, I went out again and I says, "Come in and put your coat on and go and see if you would hear any more about it."

Q. Go and see if you would hear any more about it? A. Yes, sir.

Q. And he put on his coat and went? A. He did.

Q. By the way, he didn't have but one coat,—one overcoat, I mean? A. One overcoat.

Q. And that is the same one he wore off when he was arrested? A. Yes, sir.

Q. And that is the one he wore the evening before? A. Yes, sir.

Q. And you didn't see him again until about half-past 1 that day? A. Somewhere there; yes, sir.

Q. And at half-past 1 he came home, and did he tell you anything then about what had happened? A. He did not.

Q. Did he say anything about how she died? A. He did not.

Q. Are you sure? A. No, sir; not that I remember.

Q. Well, you mean, that you don't remember now of his saying anything? A. I don't remember of his saying anything.

Q. Don't you recall that you told Mr. Hammond something like that,—this gentleman right here, I mean? A. I don't remember saying anything at all about him speaking at all about the murder.

Q. Don't you remember about that,—his saying when he came home that people supposed she died in a fit,—Mr. Crittenden said she died in a fit,—just as we have heard all the afternoon? A. I might have stated that, but I don't remember now.

Q. That you don't remember? A. I don't remember anything about it.

Q. You say you did remember it then, didn't you? A. I don't know.

Q. What? A. I don't know whether I did or not; I don't remember his saying it now, for he was quite drunk.

Q. Do you remember saying to Mr. Hammond, "People supposed she died in a fit?" That John told you that when he got home at half-past 1,—Mr. Crittenden said she died in a fit? A. Well, he might have said it; I don't remember now.

Q. At any rate, John didn't say anything to you when he got home about her having been murdered, did he? A. No, sir.

Q. Didn't say she had been choked to death? A. No, sir.

Q. Didn't say they had found any marks on her throat, did he? A. No, sir.

Q. Didn't tell you anything of the kind? A. No, sir.

Q. You told him in the morning to go out and find out about it? A. Yes, sir.

Q. And when he came back he didn't tell you anything that you remember? A. No, sir.

Q. Did you ask him? A. No, sir; I didn't ask him, for he was too drunk.

Q. He didn't talk? A. No, sir.

Q. Did he eat his dinner? A. Yes, sir.

Q. Did he stay there? A. Not very long.

Q. Isn't he a talkative man when he is drunk? A. No, sir.

Q. You think he isn't talkative? A. No, sir; not to his mother; he may out doors.

Q. Well, to other people? A. I don't know what he is to other people.

Q. At any rate, that was the first time he came home from the errand he went out for you on? A. Yes, sir.

Q. And he didn't tell you anything at all about the murder? A. I don't remember anything about it.

Q. Mrs. McCloud had done washing for you—you had done washing for Mrs. McCloud? A. Yes, sir.

Q. And you had paid her from time to time? A. She had paid me.

Q. Yes; I got it wrong. And when was the last time she had paid you? A. She never handed me a cent of money in her life.

Q. I didn't ask you that. Just pay attention to the question. When was the last time she paid you? A. Paid me Friday noon.

Q. Who brought the money to you? A. My son Eddie.

Q. How much did he bring? A. One dollar twenty.

Q. That is you sent him up with the clean clothes? A. Yes, sir.

Q. And he came back with the money? A. Yes, sir.

Q. One dollar twenty? A. One dollar twenty.

Q. Do you remember what it was in? A. It was in his hand.

Q. Was it in a bill, or silver? A. Yes, sir; a paper bill and two ten-cent pieces.

Q. Now, when did you say that John went upstairs on Friday evening at supper time? A. After he ate his supper.

Q. You knew that when Mr. Hammond questioned you at the inquest, didn't you, ma'am? A. I didn't think of it.

Q. You knew that then, didn't you, ma'am? A. No, sir; I never thought of it; hadn't time to think of it.

Q. You knew it then, didn't you? A. I presume I did.

Q. You were inquired of there particularly about his movements that night, weren't you? A. Yes, sir.

Q. You were inquired of very particularly, were you not? A. I was, I suppose.

Q. And don't you remember you told everything else that John O'Neil did at supper time, except about his going upstairs? A. I didn't tell everything.

Q. Did you leave anything out about what he did at supper time except his going upstairs? A. Yes, sir.

Q. What else did you leave out about supper time? A. I left out many a thing.

Q. Tell me anything excepting that? A. I don't know as I can; I can't think of it.

Mr. KNOWLTON. Now, I call your attention to this, — I will take your Honor's judgment whether I may or not, — by way of refreshing her memory. I don't want to go over the rule.

Mr. BEER. We object to anything being read; we know nothing of what the learned Attorney-General has in his hand; and if it relates to anything in the inquest proceedings, those, of course, were private, and we object to his introducing testimony by reading what was taken at that inquest.

SHELDON, J. Well, you do not need, Mr. Attorney, for the purpose of putting your question, to read, I suppose. Of course it is perfectly proper to ask her whether she has on any occasion, public or private, said one thing or another; and it is perfectly proper, as this is cross-examination, to ask her whether or not such questions were put to her, and such answers were made; only, if it is a part of the records, spoken of before, it might be more convenient to put the record in separately. I don't know whether this is part of the record.

Mr. KNOWLTON. No, sir, it is no part of any record that has been agreed to.

SHELDON, J. Then there can be no objection in putting the question in that way, whether or not certain questions were put to her.

Mr. BEER. The last question, I understand, your Honor, was whether she had omitted to state certain things.

SHELDON, J. A question a little while ago was whether she had now stated any other thing than this matter of going upstairs which she had omitted to state to Mr. Hammond, and she answered by saying that she had omitted a great many things, but she couldn't tell what any of them were.

Mr. DOWLIN. That is all right.

Q. (by Mr. KNOWLTON). "Well, I think they got down to their supper twenty minutes past 6. As soon as Rose got her things put away, they sat down." "Q. And then what?" "A. He ate his supper as usual; I couldn't say how much he ate; he had a little drink in him, but he never said anything to me, drunk or sober." "Q. The amount of drink didn't prevent his sitting at the table properly?" "A. No, indeed; he wasn't what you would call drunk. He ate his supper, I think he ate beans, and got up and walked out, and he hung his overcoat in the kitchen and went and got that."

Mr. BEER. We object to this reading, your Honor.

Mr. KNOWLTON. I am not making evidence of it.

SHELDON, J. It is simply, as I understand it, a question put to her, whether these questions were then put to her, and whether she then gave these answers. It doesn't put anything in evidence, it is simply a part of the question.

Q. Then there is some talk about his clothes, what he wore. "Q. Tell us what happened after supper?" "A. Well, he went out and got his coat and hat, and walked back to the stove, and lit his pipe, and he never said anything, and walked off as usual." "Q. About what time in the day did he walk out?" "A. I should think it must have been very near 6.30." Now, do you remember saying that, Mrs. O'Neil? A. Yes, and I remember a good many—

Q. I beg pardon, I want you to answer my question now. A. I think I did.

Q. Now, is there anything that you have testified to-day that you didn't say then, excepting a story of his going upstairs after supper? A. I don't know.

Q. And you left out that thing because you forgot it? A. There was a great many things I have not—

Q. I say, you left out that thing because you forgot it? Is that what you say? A. Why, I didn't bring it to recollection before, every movement he made.

Q. I beg pardon. Do you now remember saying that he lit his pipe and went right out? Do you remember saying that to-day? A. He did go out after he lit his pipe.

Q. He put on his overcoat, lit his pipe, and went directly out? A. No, he didn't.

Q. Now, don't you remember saying that? A. Well, he didn't do it.

Q. And the reason you didn't say it at the inquest was because you forgot it? A. Well, I didn't bring everything to my mind; I couldn't; I was excited.

Q. Now, tell me any other thing that happened at that supper time that you have not stated. A. I don't know as there is anything else but what I have stated.

Q. Tell me anything that happened at that supper time that you didn't tell Mr. Hammond at the inquest, that you have not stated, excepting the story of his going upstairs. A. There was a good many things, if I could think of them.

Q. Tell me one thing that he did at that supper time that you didn't tell Mr. Hammond at the inquest, except the story of his going upstairs. A. I don't know as he went upstairs; he went out the door, I couldn't tell where he went.

Q. I want to know if there is anything left out to Mr. Hammond excepting that? [No answer.]

Mr. KNOWLTON. Well, I won't bother you any more about that question.

Q. You wouldn't call him drunk at supper time? A. Yes, sir; he was drunk.

Q. You didn't say so to Mr. Hammond, did you? A. I couldn't state what I said to Mr. Hammond.

Q. Do you know when that was? A. When what was?

Q. When you talked with Mr. Hammond? A. I suppose it was at the private inquest.

Q. You knew then, did you not, that your son was charged with murder? A. Yes, sir; I did.

Q. And you knew it was of great importance that everything he did should be told? A. Yes, sir.

Q. Now, after that time, were you a witness in the district court? A. I was.

Q. And you were inquired of by Mr. Greene there in the district court, weren't you? You remember that, don't you? A. Yes, sir.

Q. And you were cross-examined by one of the gentlemen here, weren't you? A. Yes, sir.

Q. And then you told the story about that supper Friday night, didn't you? A. I suppose I did.

Q. And then you stated he had supper, and lit his pipe and went out? A. Yes, sir; I said he went out.

Q. And then you didn't say anything about his going upstairs, did you? A. I don't know now as he went upstairs; he went out of the hall door.

Q. Haven't you been telling this jury that he went upstairs? A. He went out of the door.

Q. Haven't you been telling this jury that he went upstairs? A. I suppose he went upstairs, because he didn't put his coat on.

Q. I beg your pardon. Haven't you been telling this jury that he went upstairs and was gone four or five minutes? A. Well, he was gone four or five minutes when he went out of the door.

Q. You told us he went upstairs, and was gone four or five minutes, and came back. A. I don't think I said he went upstairs.

Q. You said he was gone four or five minutes and came back? A. Yes, sir.

Q. Did you say anything about that in the district court? A. No, because —

Q. I beg your pardon, I didn't ask you why, but I will now. Why didn't you say anything about that in the district court? A. Because I hadn't time to think of it, and didn't think of it.

Q. The district court was after the inquest? A. Yes, sir.

Q. You had testified once before the inquest? A. Yes, sir.

Q. When no lawyers were present for your son. Nobody was present at the inquest representing your son? A. No, sir.

Q. Then, more than ten days after the inquest, two weeks after the inquest, you testified in the district court, didn't you? A. I suppose so.

Q. And then you didn't say anything about this going out and staying for four or five minutes, and coming back, did you? A. No, I didn't.

Q. When you were with him that night, and the doctor was there, Mrs. O'Neil, did he tell you where he got that five-dollar bill? A. He did.

Q. Where did he say he got it? A. He said he got it to Woodward's in a mistake.

Q. Mistake Friday night? A. Yes, sir.

Q. Did he tell you anything else about it? A. Not that I remember.

Q. Did he at any time tell you that he got it of Willie Noonan? A. I think that is what he told me first, — Willie Noonan gave it to him; Willie was there.

Q. And you asked Willie if that was so? A. Yes, sir.

Q. In the presence of your son? A. No, my husband asked him.

Q. But Willie Noonan said he didn't give it to him? And then he told that story about getting it in change? What time was the arrest? A. Tuesday morning.

Q. And you saw him a good many times after he was arrested? A. Yes, sir.

Q. In the jail? A. Yes, sir.

Q. Did your family see him? A. They did.

Q. All of them? A. They did.

Q. Nellie? A. Yes, sir.

Q. Minnie? A. Yes, sir.

Q. His father? A. Yes, sir.

Q. How many times did you see him before the district court? A. I couldn't tell.

Q. Who went out next after John? A. Rose.

Q. Beg your pardon. Who did you say? A. Rose.

Q. Rose went out before Tom did? A. I think she did.

Q. Do you know when Tom went out? A. Very soon after Rose.

Q. Do you know when Rose went out? A. About twenty minutes to 7.

Q. Do you remember that you said that Rose didn't go out much before 7 o'clock? A. Well, I didn't know when I said that.

Q. You did say that, didn't you? A. I might have said it; I don't remember ever saying that.

Q. You remember telling about that at the inquest, don't you? A. No, I don't remember what I told at the inquest.

Q. What did you mean, then, when you said just now that if you told that, you didn't remember much about it? A. I don't remember much about it; I don't know what I said at the private inquest; I don't know much the way I was put there, — the way I was drove there.

Q. Who drove you there? A. The sheriff.

Q. Were you treated discourteously? A. Not there.

Q. Will you tell this jury that this man used one disrespectful or discourteous word to you? A. I don't say he did.

Q. Weren't his questions as kindly put as any questions were ever put by anybody in this world, after you got in there? A. Yes, sir.

Q. You were then sworn? A. Yes, sir.

Mr. BEER. The witness has not reflected upon Mr. Hammond. She says she was driven there by the sheriff.

SHELDON, J. That doesn't make this cross-examination incompetent.

Mr. BEER. I think it is not a fair cross-examination.

Q. (by Mr. KNOWLTON). You sat down on a chair? A. I don't know whether I sat down or stood up.

Q. Do you remember you sat at the table? A. I couldn't tell.

Q. You don't know that? A. No, I don't.

Q. When did it first come into your mind that your son was out, and was gone four or five minutes after supper? A. There has a good many things come into my mind since.

Q. Beg your pardon. Answer that question. When did it first come into your mind that your son went out and was gone four or five minutes after supper? A. Three or four months ago.

Q. It is now July 26. Three or four months ago would be in April, and that is the first time that it came into your mind? A. I think so.

Q. And that was three months after the event? A. I think so.

Q. Did he tell you anything at any time about this murder? A. No, sir; he never did.

Q. No time? A. Never.

Q. When he worked he paid you board, did he? A. Yes, sometimes.

Q. When was the last time he paid you board? A. I think in November he gave me a little money.

Q. How much then? A. He gave me \$7.

Q. That was when he was working on the electric road? A. Yes, sir; I think he was painting bridges, or something.

Q. And that was the last time he paid you anything? A. Yes, sir.

Q. Were you up when Miss Rose came home that night? A. I was.

Q. Did anybody come home with her? A. There did.

Q. Who was it? A. His name was John Doucy, I think.

Q. What is his business? A. I don't know as I could tell.

Q. Where does he live? A. He worked in the peg shop.

Q. Now, I will ask you again, once more, whether you now don't remember that Rose did not go out until 7 o'clock that night? A. I know she went out before 7.

Q. And do you now know when she went out? A. About twenty minutes to 7.

Q. And you knew all of what you know now at the time of the inquest, didn't you? A. I did, I suppose; yes, sir.

Q. And did you understand Mr. Hammond when he asked you what time Rose went out? A. Why, I don't know whether I understood him; I don't know whether I did or not.

Q. You say Thomas went out first? A. I think he did; I would not be sure.

Q. And do you remember telling Mr. Hammond he did not go out until about 7 o'clock, — not much before 7? A. I couldn't tell which one went out first, — Thomas or Rose; I have a very large family.

Q. Your attention was called to the events of that evening pretty soon, wasn't it? When John was arrested, your memory went back to the events of that evening, didn't it? A. I don't know; I was so excited I couldn't think of anything.

Q. You knew that evening was the one when it was charged he did the job? A. Yes, sir.

Q. When you got over your excitement, didn't you think over the events of that evening? A. No, sir; the doings going on in my home I didn't think of much; had something else to think of.

Q. When John was arrested, for having done this job Friday night,

didn't it come back to you to think of what happened that evening?
A. No, sir; I don't think it did; I was too excited and crazy.

Q. Now, was John what you would call drunk at that time, supper time? A. Well, he staggered; that is all I can tell you.

Q. [Question repeated.] A. Yes, sir.

Q. What made you say that he was not what you would call drunk when you answered Mr. Hammond? A. I don't know that I did say so.

Q. Don't you remember that you did? A. No, sir; I don't.

Q. Had Mrs. McCloud ever been to your house? A. Yes, sir.

Q. When? A. A year ago last June or July, I can't tell which.

Q. Had she been there afterwards? A. No, sir; never stood on my floor afterwards.

Q. I didn't ask you whether she stood on your floor. Had she been to the door? A. No, sir.

Q. Had she been to the door that same evening that she was killed?
A. No, sir.

Re-direct Examination.

Q. (by Mr. DOWLIN). Let me refresh your memory a little. You recognize this gentleman here [pointing to Mr. Beer]. A. I do.

Q. Do you remember talking with him just before the preliminary hearing in Greenfield? A. I do.

Q. Do you remember telling him then that Jack —

Mr. KNOWLTON. That is objected to, — anything that was then said to Mr. Beer.

SHELDON, J. What do you expect to show by the question?

Mr. KNOWLTON. I make my objection early, because it seems to me the question should not be put.

Mr. DOWLIN. I was going to suggest an incident, to refresh her memory. [Objected to.]

SHELDON, J. To refresh her memory as to what?

Mr. DOWLIN. As to her statement in regard to when she first stated about her son John leaving the room.

SHELDON, J. That is, you mean you expect to show that she stated about her son John leaving the room before the preliminary hearing?

Mr. DOWLIN. I expected to show it by conversation; I wanted to bring it up to her memory in a conversation that she had with Mr. Beer. I will take it back, because my brother Beer tells me it was a week or two after the preliminary hearing.

GEORGE W. HART — *sworn.*

Q. (by Mr. DOWLIN). What is your name? A. George W. Hart.

Q. What is your age? A. Thirty-six.

Q. Where do you live? A. Conway.

Q. Do you know David Davis? A. Yes, sir.

- Q. How long have you known him? A. Well, about twenty years.
- Q. Is he any relation of yours? A. Yes, sir.
- Q. What? A. Second cousin.
- Q. Are you acquainted in Ashfield? A. I am; yes, sir.
- Q. Can you state what his general reputation for truth and veracity is? A. I can say it is bad.
- Q. David Davis acquainted in Conway, to your knowledge? A. Yes, sir.
- Q. What is his general reputation in Conway? A. Bad.

Cross-examination.

- Q. (by Mr. KNOWLTON). Are you on pretty good terms with your cousin? A. Yes, sir; always have been.
- Q. Good friends with him? A. Yes, sir; always calculated I was.
- Q. (by Mr. DOWLIN). Whether you know whether the Davis family ever resided in Andover or not?
- Mr. KNOWLTON. Is that to prove the identity of this record?
- Mr. DOWLIN. Yes, sir.
- Mr. KNOWLTON. I will agree to that record. It is agreed that the convictions in the Lawrence police court are those of the witness, David Davis.

GEORGE W. BOYDEN — *sworn*.

- Q. (by Mr. BEER). What is your name? A. George W. Boyden.
- Q. Where do you reside? A. Conway.
- Q. How long have you resided there? A. Most of the time for forty-two years.
- Q. Do you know Richard Schenck? A. Yes, sir.
- Q. Of Conway? A. I know of a Richard Schenck that used to live in Conway.
- Q. Where does he live now? A. I think he is in the State reform school, or somewhere.
- Q. Before he went to the State reform school, or wherever he may be, he lived at Conway, did he? A. Yes, sir.
- Q. How long have you known him? A. Well, I should say perhaps five or six years; it might be more.
- Q. Do you know his reputation for truth and veracity in the community where he resided? A. Yes, sir.
- Q. What is it? A. Bad.
- Mr. BEER. That is all.
- Mr. HAMMOND. No questions.
- Mr. BEER [calling a witness]. William Flagg.
- Mr. KNOWLTON. So far as we are concerned, you may state whom else you have, and state that they will testify similarly as to Schenck.

WILLIAM M. FLAGG — *sworn*.

Q. (by Mr. BEER). What is your name? A. William M. Flagg.

Q. Where do you reside? A. Conway.

Q. Do you know Richard Schenck? A. Yes, sir.

Q. Of Conway? Do you know his reputation for truth and veracity? A. Yes, sir.

Q. General reputation for truth and veracity in the community where he has resided? A. Yes, sir.

Q. What is it? A. Bad.

Mr. BEER. That is all.

Mr. KNOWLTON. No questions.

DENNIS FARMER — *sworn*.

Q. (by Mr. BEER). What is your name? A. My name is Dennis Farmer, sir.

Q. Where do you reside? A. I live in Conway.

Q. Do you know Richard Schenck of Conway? A. Some; yes, sir.

Q. Do you know his general reputation for truth and veracity? A. Yes, sir.

Q. In the community where he has resided? A. Sir?

Q. Do you know his general reputation for truth and veracity in the community where he has resided? A. Yes, sir.

Q. What is it? A. Well, it is kind o' poor.

Q. What? A. It is bad.

Mr. BEER. That is all.

Mr. KNOWLTON. Nothing.

HENRY L. WELLS — *sworn*.

Q. (by Mr. BEER). What is your name? A. Henry L. Wells.

Q. Where do you reside? A. Conway.

Q. What is your business? A. Boss in one of the cotton factories.

Q. Do you know Richard Schenck? A. Yes, sir.

Q. Do you know his general reputation for truth and veracity in the community where he has resided? A. Yes, sir.

Q. What is it? A. Bad.

Mr. BEER. That is all.

CHARLES PECK — *sworn*.

Q. (by Mr. BEER). Your full name? A. Charles Peck.

Q. Where do you reside? A. Conway.

Q. You are the superintendent of the Tucker & Cook mill at Conway? A. Yes, sir.

Q. Do you know Richard Schenck of Conway? A. Not of Conway now, formerly of Conway; yes, sir.

Q. Where is he now? A. State's prison.

Q. That is the man. Do you know his general reputation for truth and veracity in the community where he has resided? A. Yes, sir.

Q. What is it? A. Very bad.

Mr. BEER. That is all.

Mr. KNOWLTON. Nothing.

ROSE O'NEIL — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Rose O'Neil.

Q. What is your age? A. Twenty.

Q. Where is your home? A. On Green Street, on the Buckland side, Shelburne Falls.

Q. Town of Buckland? A. Town of Buckland.

Q. Are you a sister of John O'Neil in this room? A. Yes, sir.

Q. And do you remember Friday night, January 8? A. Yes, sir.

Q. Do you remember Friday afternoon, January the 8th? A. Yes, sir.

Q. Were you at work Friday afternoon? A. Yes, sir.

Q. Where were you at work? A. Mr. Foster's peg factory.

Q. At what time did you finish your work? A. Six o'clock that night.

Q. And if you had any appointment with any one that evening? A. I did; I had an appointment to meet Miss Quinn.

Q. And where? A. At the hotel, 7 o'clock that night.

Q. And could you turn around and find the peg factory there on the map, or where it would be located? It is not designated on the map. I will show you where the bridge is, and State Street and Ward's corner. In going from the peg factory, on what street do you first come? A. Clement Street.

Q. Clement Street? A. Green Street from my home.

Q. Is the peg factory on Clement Street? A. No, sir.

Q. How far away from Clement Street is it? A. Well, I should say—I don't know exactly how far it is; there is a new road that goes up.

Q. You left the peg factory, and in whose company did you leave the peg factory that evening? A. Miss Schontag's.

Q. How far did you proceed from the peg factory with Miss Schontag? A. Up to the corner of Sears Street and Clement Street.

Q. Up to what corner? A. Sears and Clement.

Q. Was it Sears or Prospect Street? Was it the first or the second cross road that you would come up to where you left Miss Schontag, running from Clement? A. The second.

Q. If you will turn around and look at the map, you will see that is marked Prospect Street. A. Yes, sir.

Q. How far did you go with her? A. To the corner of Prospect Street.

Q. If you had any conversation with her after you reached the corner of Prospect Street? A. I did.

Q. How long did you stand there? A. Well, I should think we stood there ten or fifteen minutes.

Q. And then where did you go after you left Miss Schontag? A. I went over Prospect Street to my home, to Green Street, to my home.

Q. About what time do you think you got home? A. Well, I should say about fifteen minutes after 6.

Q. And was your brother John there? A. He was.

Q. Which door did you go in? A. Went in the front door.

Q. Into which room did you first go from the front hall? A. Dining room.

Q. And where did you see your brother John? A. He stood between the kitchen and the dining room, in the middle of the doors; I think he had just come in.

Q. Now, did you eat supper that evening? A. I did.

Q. And who ate supper with you? A. My brother Tom and Johnnie.

Q. And about what time did you finish supper? A. Well, it must have been half-past 6, certain.

Q. What did you do, if anything, after you finished supper? A. I went to the glass and combed back my hair, and then I went upstairs to my room and changed my skirt, and came back down stairs in the dining room again.

Q. When you came down stairs in the dining room, did you see your brother John? A. I did.

Q. Where was he standing? A. He was sitting in the kitchen, by the kitchen stove.

Q. Did you see him doing anything? A. Yes, sir; he was lighting a pipe.

Q. And did you notice him later? A. Yes, sir; I saw him come into the dining room, put on his coat and go out.

Q. And where was your sister Minnie that night? A. I think she was at work at the Shelburne Falls House.

Q. Where was your sister Katie? A. She was at the Shelburne Falls House, at work.

Q. Where was your sister Nellie? A. She was in North Adams.

Q. Where was your sister Maggie? A. She was out in the yard, I think, at that time.

Q. And do you remember what time it was when you came down stairs and saw your brother John just getting ready to go out? A. I do; it was almost twenty minutes of 7.

Q. How do you know that? A. I stood at the glass, took out my watch and looked at it.

Q. Did you have your watch on? A. I did.

Q. And why did you look at your watch? A. Because I was going to meet one of the girls at 7 o'clock that night, and I looked at my watch to see what time it was.

Q. And do you know whether your sister Minnie owns a trunk that is kept at your house? A. Yes, sir.

Q. What time was it that John left the house, did you say? A. Nearly twenty minutes of 7.

Q. How long after John left was it that you left? A. About five minutes, I think.

Q. When did you see him again that night? A. I saw him about five minutes of 7.

Q. Whereabouts? A. In front of Mr. Knowlton's tin shop, on the Shelburne side of the bridge.

Q. Will you point out to the jury where Knowlton's tin shop is? A. I should think it would be right in here somewhere, right there.

Q. Now, when your brother was home at supper, did you notice anything about his condition different than ordinarily? A. Yes, sir; he was intoxicated.

Q. Did you and your brother have any conversation about that? A. We did.

Q. And on which side of the bridge did you cross when you crossed the bridge, on the north or south side? A. On the north side.

Q. And did you pass your brother directly by him on the sidewalk? A. I did not.

Q. Now, how did you pass him? A. I got almost to him, and I crossed the street.

Q. On to the south side of Bridge Street? A. Yes, sir.

Q. You were going to the hotel, weren't you? A. Yes, sir.

Q. Now, why did you cross the street?

Mr. KNOWLTON. Wait a minute.

SHELDON, J. I don't see how it is competent, as you put it.

Q. Did you notice anything about the condition of your brother that led you to cross the street? A. Yes, sir.

Q. And what was that? A. He was intoxicated greatly at the time.

Q. And is there any reason when your brother is intoxicated, that you do not desire to meet him on the street?

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. That is not competent.

Q. How do you know that it was five minutes of 7? A. Because I judge this way: when I crossed the street and went up to the post-office, I crossed over, and when I got on the hotel steps, the town clock was just striking 7; and I thought it would take me just about five minutes to go that distance.

Q. Now, do you remember last Christmas Day? A. I do, very well.

Q. Do you remember whether or not your sister Nellie was home? A. She was.

Q. Do you remember whether or not you saw her in the parlor? A. I did.

Q. Did you ever see the key of your sister Minnie's trunk? A. I did.

Q. Did you know where that key was kept? A. Yes, sir; I do.

Q. Would you recognize the key if you saw it? A. Yes, sir.

Q. Is that the key? A. That is the same key, I should think.

Q. And in what was the key kept? A. It was kept in a cup.

Q. Where was the cup kept? A. On the next to the top shelf in the cupboard in the sitting room.

Q. Is that the cup? A. That is the very cup, I think.

Q. And whether or not you were in the sitting room with your sister Nellie on Christmas Day? A. I was.

Q. Whether or not your sister Nellie gave you that key? A. She did.

Q. And whether or not you did anything after receiving that key? And if so, state what. A. I did. I went into the sitting room that afternoon with my sister, and I was going to my room upstairs. She came to me and gave me the key, and asked me if I would unlock the trunk upstairs. [Objected to.]

Q. I didn't ask you what was said. I asked you if you did anything after she gave you the key, and if so, what? A. I went upstairs and unlocked the trunk, and took out a pocketbook, and came down stairs and gave it to my sister.

Q. Would you recognize that pocketbook if you saw it? A. Yes, sir.

Q. Is that [showing] it? A. It looks like it.

Q. Take time and look it over. Don't look in it now. A. It looks just like the same one.

Q. And after you handed the pocketbook to your sister Nellie, did you see her do anything with it? A. I did; I saw her open it and put some money in it.

Q. Did you recognize what she put in it? A. I did; a five-dollar bill.

Q. And did you see any other money in the pocketbook? A. There was.

Q. Did you recognize the denominations of it? A. I did not.

Q. In what form was it in the pocketbook, the other money? A. They seemed to be in a roll.

Q. Do you recognize that bill [showing]? A. Yes, sir; that seems like the bill.

Q. Is there anything about it that you can tell it is the same bill? A. No, sir; there is not.

Q. Well, now, will you take this pocketbook and show this jury just how you saw your sister Nellie put the money in it? A. She took it like that, and put it down like that, in there [showing].

Q. After she put the money in the pocketbook, do you remember seeing her do anything with this pocketbook? A. I saw her go out of the room.

Q. Did she have the pocketbook with her? A. Yes, sir; she did.

Q. Did you see her come back into the room again? A. Yes, sir; in a short time she came back.

Q. And when she came back in the room, did she have anything with her? A. She had; she had the key.

Q. And what did she do, if anything, with the key? A. She went to the cupboard and put it on the shelf.

Q. Who was in the room when this was done? A. My sister Nellie, my mother, Minnie and my brother Johnnie.

Q. Did your brother Johnnie have an opportunity to see this done? A. He did.

Mr. DOWLIN. That is all.

Cross-examination.

Q. (by Mr. HAMMOND). Miss Rose, you said that four of your sisters lived away from home at that time? A. Three of them.

Q. One at North Adams? A. Yes, sir.

Q. How many at the Shelburne Falls House? A. Two.

Q. How many of you were sleeping at home, of your sisters? A. Only myself and the younger children.

Q. I mean counting the younger children, the girls? A. There was four girls at home.

Q. What room did you and the four girls occupy, or what rooms? A. I slept alone, in a room right over the sitting room.

Q. You have a room alone? A. Yes, sir.

Q. And the little girls had a room? A. They had a room next to mine, right from mine, on the same side.

Q. Which room was next to the front of the house? A. Upstairs, do you mean?

Q. Yes. A. Mine was. There was a front room right over the sitting room, and then there is a room right on the same side.

Q. What do you mean by sitting room and parlor? State which rooms you mean? A. They are both the same room.

Q. The room at the right of the front entrance? A. Yes, sir.

Q. You call that sitting room and parlor? A. Yes, sir.

Q. And the room at the left of the front entrance? A. The dining room.

Q. And the chamber over the sitting room was occupied by? A. Me.

Q. And which chamber did the little girls occupy? A. The one right on the same side as mine.

Q. Back of it? A. Yes, sir.

Q. Right over the parlor bed room? A. Yes, sir.

Q. What room did the boys have? A. One right opposite me, over the dining room.

Q. The boys slept in that room? A. Three younger brothers and my brother John.

Q. John, Tom, Eddie and Joe, all four? A. Yes, sir.

Q. Two beds? A. Yes, sir; it is a large room, and two beds in it.

Q. So that the boys' room was the dining room chamber, what you might call the dining room chamber, the chamber over the dining room? A. Yes, sir.

Q. And all the boys occupied that? A. Yes, sir.

Q. And you occupied the parlor chamber? A. Yes, sir.

Q. And the small girls occupied the bedroom over the parlor bedroom? A. Yes, sir.

Q. And your North Adams sister kept her trunk where? A. It was my sister Minnie's trunk.

Q. And that trunk was kept where? A. In the hallway at the head of the stairs, on the left-hand side as you go up.

Q. You were about at your ordinary speed in going home to your supper Friday night? A. Yes, sir.

Q. And got home about what time? A. I stopped at the corner talking.

Q. Well, got home about what time? A. I got home at about a quarter after 6, I should say.

Q. Did you and John and Thomas sit down at the regular dining room table when you ate your supper? A. Yes, sir.

Q. And was the table set in the usual way? A. Yes, sir.

Q. And whether each one sat at his usual place? A. Yes, sir.

Q. John in his usual place? A. Yes, sir.

Q. Thomas in his usual place? A. Yes, sir.

Q. And you in yours? A. Yes, sir.

Q. Was there anything strange or peculiar about John's condition at the supper table? A. Yes, sir, he was intoxicated.

Q. Have you had that question asked you before by me? A. No, sir; not that I remember.

Q. Do you remember being inquired of by me on the twentieth day of January, at the Buckland town hall? A. Yes, sir; I remember being there.

Q. And you were taken into the small room off the hall, called the selectmen's room? A. Yes, sir.

Q. And there were four or five people in the room? A. Yes, sir.

Q. And Judge Lyman sat there? A. Yes, sir.

Q. And you were invited to take a seat in a chair? A. Yes, sir.

Q. And you were asked some questions? A. Yes, sir.

Q. Do you recall my asking you the question that I asked you just now? A. I do not.

Q. And didn't you answer, "He was all right, as far as I noticed"? A. No, sir; I never did.

Q. Were you asked who left first after supper? A. I think I was.

Q. And you said Johnnie? A. No, sir; I did not. I said I thought my brother Tom left, but I couldn't say as to which one of them left first.

Q. Do you now say that you think Johnnie left first? A. I say Tom left first, but I am not sure.

Q. Weren't you asked who were there, and who left first after supper, and didn't you answer in one word, Johnnie? A. No, sir; I never said positive, because I wasn't certain.

Q. Were you not then asked as the next question, "About what time did he leave?" And didn't you answer, "About 6.30"? A. No, sir; you asked what time he got through supper, and I said he couldn't have got through before half-past 6.

Q. Weren't you asked exactly the question which I gave you now? A. I gave no exact answer at all.

Q. Weren't you asked that question, "About what time did he leave?" And didn't you say, "I should judge 6.30"? A. I don't remember ever saying so; I might have.

Q. Weren't you next asked the question, "Did you see him leave the house?" And did you answer, "I did"? A. I saw him go out the door; yes, sir.

Q. Did he leave the house? A. I say I saw him go from the dining room door; as to whether he went out, I am not sure; I didn't watch him go out of the door.

Q. What time did you then say you left the house? A. I said I left about quarter of 7; perhaps a little after.

Q. Didn't you say, "I next left about 7.15"? A. No, sir; never.

Q. Did you see your brother John down town, or only think you heard his voice? A. I saw him distinctly, down town.

Q. Have you ever said that you only heard his voice? A. No, sir.

Q. And you say you saw him at what place? A. At Knowlton's tin store; he stood with some fellows there.

Q. Two men? A. Two or three, I couldn't say which.

Q. Full-grown men? A. Yes, sir.

Q. Were there any signs of drink upon him as you say you saw him there upon the street? A. Yes, sir.

Q. Were you asked that question by me at the inquest of January 20? A. Was I asked the question if he was —

Q. After you had said they were standing there and doing nothing in particular, didn't I ask you, "Any signs of drink?" And didn't you answer, "No, I didn't notice; but they might have been drinking"? A. Well, I said they were not drinking there, as I could see, and they were not; but he was intoxicated, and he was at home.

Q. Didn't I ask you if there were any signs of drink, and didn't you answer, "No, I didn't notice"? A. If you did, I took it that you asked me if they were drinking in the crowd. You did ask me if I saw him drink; I remember it perfectly well.

Q. Did you speak with John? A. I did not.

Q. Did you know about the time of his coming home that night? A. Yes, sir; I know he got home.

Q. How did you know the time of his returning? A. My mother slept —

Q. I mean not from information, but personal knowledge? A. Yes, sir; from personal knowledge.

Q. Were you awake? A. I was.

Q. About what time did he come in? A. I heard him at the door, and I got up to let him in at the same time my mother got up; then went to bed, and fell asleep, and woke up shortly after, and heard the town clock strike 2.

MINNIE O'NEIL — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Minnie O'Neil.

Q. What is your age? A. Twenty-eight years old.

Q. On Friday night, January 8, where were you? A. At the hotel.

Q. Did you see your brother that night? A. I did not.

Q. Do you remember last Christmas Day? A. I do.

Q. Were you in the sitting room that day? A. Yes, sir.

Q. And did you see your sister Rose do anything? A. Yes, sir.

Q. And was your sister Nellie at home? A. Yes, sir.

Q. And did you see your sister Nellie give anything to your sister Rose? A. Yes, sir.

Q. What was it? A. Key to the trunk.

Q. Do you keep a trunk there at home? A. Yes, sir.

Q. It is your trunk, is it? A. Yes, sir.

Q. And does your sister Nellie keep a pocketbook in that trunk? A. Yes, sir.

Q. How long has she kept a pocketbook in your trunk? A. Oh, for a good many years.

Q. How long ago was it your sister Nellie went from Shelburne Falls to North Adams? A. I should think about two years; two and a half or so.

Q. And did she have a pocketbook in the trunk then. A. Yes, sir.

Q. Had she one in there before that time? A. Yes, sir.

Q. And have you seen her go to the trunk? A. Yes, sir.

Q. And do you know for what purpose she kept that pocketbook? A. Her money.

Mr. KNOWLTON. Well, wait a moment. That I pray your Honors' judgment on.

SHELDON, J. She might be asked if she knows what her sister did with the pocketbook.

Q. Do you know what your sister did with the pocketbook at different times you have seen her go to the trunk? A. No, sir.

Q. Would you recognize the key to that trunk? A. Yes, sir.

Q. And is that [producing key] the key to the trunk? A. Yes, sir.

Q. And where is that key kept? A. In the cupboard, in a cup, I think.

Q. Is that the cup? A. Yes, sir.

Q. And was the key kept in the cup like that? A. Yes, sir.

Q. And do you remember who was in the room at the time your sister Nellie and sister Rose, that you have described, were in the room? A. I do.

Q. Who was there? A. There was Nellie, Rose and Katie, and I and Johnnie and my mother.

Q. And did you see your sister Nellie do anything with this key? A. I did.

Q. And what did she do with it? A. She gave it to my sister Rose.

Q. And did your sister Rose do anything? A. She did.

Q. What did she do? A. She ran upstairs.

Q. And did she come back to the room again? A. Yes, sir.

Q. And, if so, what did she bring with her, if anything? A. She brought Nellie's pocketbook.

- Q. Did she bring back the key? A. Yes, sir.
- Q. Did you see what she did with the pocketbook and key? A. Yes, sir.
- Q. What did she do with them? A. She gave Nellie the pocketbook.
- Q. Did you see what Nellie did with the pocketbook? A. Yes, sir.
- Q. What did she do? A. She had another pocketbook that she always carried with her, and then she took some money out of that pocketbook and put it into this one.
- Q. Did you see what the money was? A. I did not.
- Q. Did you notice whether it was a bill, or silver, or what it was? A. No, sir.
- Q. Did you notice it was money? A. Yes, sir.
- Q. How do you know it was money? A. I knew it was money.
- Q. Did you see it? A. Yes, sir; some of it.
- Q. And what did you see your sister Nellie do with the key, if anything? A. She went and put it back in the cupboard, in the cup.
- Q. Did she do that after she went up stairs? A. Yes, sir.
- Q. And did you see her leave the room with the pocketbook? A. Yes, sir.
- Mr. DOWLIN. That is all.

Cross-examination.

- Q. (by Mr. KNOWLTON). What time of day was this? A. Christmas Day.
- Q. Yes. A. About half-past 2 or 3 o'clock.
- Q. Who was at home at that time? A. Nellie, Rosie, Johnnie and I, Katie and mother and the whole of us was to home.
- Q. Where was Eddie? A. He was there.
- Q. Tom? A. They were there.
- Q. All of them at home? A. Yes, sir.
- Mr. KNOWLTON. That is all.

NELLIE O'NEIL — sworn.

- Q. (by Mr. DOWLIN). What is your name? A. Nellie O'Neil.
- Q. What is your age? A. Twenty-four last March.
- Q. Where are you living? A. Shelburne Falls.
- Q. Where were you living last December? A. December?
- Q. Yes. A. '96?
- Q. Yes. A. North Adams.
- Q. Last December, 1896, where were you living? A. North Adams.

Q. Now, where did you work before you went to North Adams?
A. Shelburne Falls House.

Q. In what capacity? What were your duties? A. Shelburne Falls House, table waitress.

Q. And did you ever use your sister Minnie's trunk for any purpose? A. I did; yes, sir.

Q. For what? A. I had an old pocketbook in there in which I kept my earnings; if I had any left, I would save and put away.

Q. And did you have a pocketbook in that trunk when you left Shelburne Falls and went to North Adams? A. I did; yes, sir.

Q. Do you remember about how much money you had in it then?
A. I don't remember just how much; no, sir.

Q. Approximately could you tell somewhere near? A. Well, I should say perhaps about \$10.

Q. And how long ago did you go to North Adams? A. I think it was three years ago last April.

Q. And where did you work in North Adams? A. At the Wilson House.

Q. And did you return home at any time during the time you worked at North Adams? A. I did; yes, sir.

Q. And at any time that you returned from North Adams, did you ever have occasion to use that pocketbook that you kept in Minnie's trunk? A. Yes, sir, I did.

Q. And for what? A. I would go and put my money in, if I had any left after buying my clothes, to spare, I would put it in.

Q. Did you ever take any out? A. Yes, sir; I did.

Q. When did you take money out from the pocketbook, the last time that you remember? A. The last time I took any out was Decoration Day, 1896.

Q. And how much did you take out then? A. Fifteen dollars.

Q. And how much had you left in the pocketbook then? A. Ten seventy-five.

Q. Do you know what the denominations of the money was that you had left in the pocketbook then? A. I do; yes, sir.

Q. What was it? A. It was a ten-dollar bill, and I think it was a fifty-cent piece and a quarter.

Q. After Decoration Day, 1896, did you visit your home again?
A. I did; yes, sir.

Q. When was it? A. Came home in July.

Q. What did you put in the pocketbook, if anything, then?
A. Five dollars.

Q. Did you come home again? A. I did, yes, sir.

Q. When was that? A. October.

Q. Did you have any occasion to go to the pocketbook then?
A. Yes, sir.

Q. And what did you do then? A. I put \$7 in.

Q. And at Christmas time do you remember going home then?
A. Yes, sir.

Q. Do you remember where you were in the house then when you had occasion to use the pocketbook, if at all? A. Yes, sir.

Q. Where were you? A. I was in the sitting room in my father's house.

Q. And do you remember what took place there? A. I do, sir.

Q. In relation to the pocketbook? A. Yes, sir.

Q. Will you please state it to the jury, just as it was? A. My sister Rose was going up stairs, I don't remember just what she was going after. I got her the key, and asked her if she would go to the trunk, unlock it and bring the pocketbook to me. She did so. I took from the pocketbook I carried with me and put into this pocketbook, carried the pocketbook up stairs, locked the trunk, came down, put the key in the cup in the cupboard.

Q. Now, will you state to the jury when was the next time that you had occasion to go to that pocketbook? A. It was in February, after the preliminary hearing.

Q. And will you state to the jury whether or not there was then in the pocketbook the same amount of money there was at Christmas time? A. No, sir.

Q. Will you state to the jury whether or not there was any money missing from the pocketbook then? A. Yes, sir; \$22.

Q. And will you state whether or not you took the money out of the pocketbook at Christmas time when you put the \$5 in — the money that was in there? A. No, sir; I did not.

Q. And will you state how you put the five-dollar bill into the pocketbook? A. I just simply tucked it side of the other.

Q. How was the other money in the pocketbook? A. It was rolled up; I noticed the ten-dollar bill on top; I thought it was all there; didn't take it out to count it.

Q. It was rolled up? A. Yes, sir.

Q. And what did you find when you went to your pocketbook next time to look at it, in February? A. Five dollars seventy-five cents.

Q. And is this the pocketbook? A. Yes, sir.

Q. And is that the condition in which you found it? A. Yes, sir.

Q. What did you then do with the pocketbook? A. I brought it back to the trunk, locked the trunk and it has been there ever since.

Q. Why did you go to the trunk in February? A. My sister —
Mr. KNOWLTON. Wait a minute.

SHELDON, J. I don't see as that is competent.

Q. Do you know what has become of the money? A. No, sir; I don't.

Q. Do you know that it is gone? A. Yes, sir.

Q. What did you go to your pocketbook for in February? A. My oldest sister, who has always had —

Mr. HAMMOND. That is the same thing. It is objected to.

Mr. DOWLIN. Won't you state what you went to your pocketbook for?

Mr. KNOWLTON. I object to that.

SHELDON, J. Excluded.

Q. Did you have occasion to go to your pocketbook in February?

A. I did; yes, sir.

Cross-examination.

Q. (by Mr. KNOWLTON). What did you find there when you went there in February? A. Five seventy-five.

Q. Had you kept any memorandum of the amount? A. No, sir; I had not.

Q. The fifty-cent piece and quarter were still there, were they? A. It was; yes, sir.

Q. No silver had been taken from the pocketbook? A. No, sir; I think not.

Mr. PARKHURST. If your Honors please, a time has now come when we desire to have a little consultation.

Mr. KNOWLTON. Before you begin this, I would like to have Rose recalled just for one question.

ROSE O'NEIL — *recalled.*

Re-cross-examination.

Q. (by Mr. KNOWLTON). What time of the day did you say this was that the pocketbook was got out on Christmas Day? A. I think it was about 4 o'clock.

Q. In the afternoon? A. Yes, sir.

Q. Had Tom been home all day? A. My brother Tom?

Q. Yes? A. Yes, sir; I think he had.

Q. All day long? A. I don't know whether he had in the morning or not; he was there at dinner.

Q. There at dinner? A. Yes, sir.

Re-direct Examination.

Q. (by Mr. DOWLIN). Had you had your dinner Christmas Day when you saw the pocketbook? A. Yes, sir.

Q. And was it after dinner? A. Yes, sir.

Q. And do you know definitely the time you had your dinner?
A. I do not.

Q. And you are giving the statement to the best of your knowledge? A. Yes, sir.

NELLIE O'NEIL — *recalled — Re-cross-examination.*

Q. (by Mr. KNOWLTON). Miss O'Neil, along in January were you owing any money in Shelburne? A. In '96 or '97?

Q. '97. A. No, sir.

Q. Do you remember getting a letter from a lawyer asking you to pay a bill in January? A. No, sir; I don't.

Q. Mr. Mansfield? A. Not in '97.

Q. When was it? A. '96.

Q. What time in '96? A. I don't remember just the month.

Q. About what time in the year was it? A. Well, I think it was in the fall.

Q. The fall of 1896? A. Yes, sir.

Q. How much was the bill? A. Four dollars nineteen. Mrs. Koonz's.

Q. Do you remember replying to the letter? A. Yes, sir.

Q. Do you remember telling him you had no money? A. No, sir; I don't.

Q. Do you remember saying you would like to pay it a dollar a month? A. Yes, sir.

Q. How much money did you have in your wallet at home at that time? A. I don't remember.

Q. That fall? A. I don't remember.

Q. How much did you have there the first day of November?
A. '97?

Q. '96. A. Well, I don't remember.

Q. Can't you tell me? A. No.

Q. Take all the time you want and then tell me. A. Well, sir, I don't remember.

Q. The first day of October, how much did you have there?
A. Twenty-two dollars seventy-five cents.

Q. The first day of October? A. Yes, sir.

Q. The first day of November, do you think you had more?
A. No, sir.

Q. The same in November? A. Yes, sir.

Q. '96, I am talking about, last fall. Did you have the same in December? A. Yes, sir.

Q. How much did you have with the five-dollar bill? A. Twenty-seven dollars seventy-five cents, I suppose.

Q. Then you had how much, do you think, the first day of November? A. November, 1896, do you mean?

Q. Yes. A. Why, twenty-two dollars seventy-five cents.

Q. What was it, in what denominations? A. I don't remember.

Q. Do you remember any of it? A. Yes, sir; I remember I had a ten-dollar bill, because I saw it.

Q. I didn't ask you why you did it, I asked you if you remembered it? A. Yes, sir.

Q. How long had the ten-dollar bill been in there? A. A long while. It was one of the first bills I had there.

Q. How much did you have when you took that out? A. Ten dollars seventy-five.

Q. When did you take it out? A. Decoration Day, 1896.

Q. This bill that you didn't pay has since been paid? A. It is paid now, but not from that money.

Q. You didn't pay it then? A. No, sir.

Adjourned.

- Q. Did she bring back the key? A. Yes, sir.
- Q. Did you see what she did with the pocketbook and key? A. Yes, sir.
- Q. What did she do with them? A. She gave Nellie the pocketbook.
- Q. Did you see what Nellie did with the pocketbook? A. Yes, sir.
- Q. What did she do? A. She had another pocketbook that she always carried with her, and then she took some money out of that pocketbook and put it into this one.
- Q. Did you see what the money was? A. I did not.
- Q. Did you notice whether it was a bill, or silver, or what it was? A. No, sir.
- Q. Did you notice it was money? A. Yes, sir.
- Q. How do you know it was money? A. I knew it was money.
- Q. Did you see it? A. Yes, sir; some of it.
- Q. And what did you see your sister Nellie do with the key, if anything? A. She went and put it back in the cupboard, in the cup.
- Q. Did she do that after she went up stairs? A. Yes, sir.
- Q. And did you see her leave the room with the pocketbook? A. Yes, sir.
- Mr. DOWLIN. That is all.

Cross-examination.

- Q. (by Mr. KNOWLTON). What time of day was this? A. Christmas Day.
- Q. Yes. A. About half-past 2 or 3 o'clock.
- Q. Who was at home at that time? A. Nellie, Rosie, Johnnie and I, Katie and mother and the whole of us was to home.
- Q. Where was Eddie? A. He was there.
- Q. Tom? A. They were there.
- Q. All of them at home? A. Yes, sir.
- Mr. KNOWLTON. That is all.

NELLIE O'NEIL — *sworn*.

- Q. (by Mr. DOWLIN). What is your name? A. Nellie O'Neil.
- Q. What is your age? A. Twenty-four last March.
- Q. Where are you living? A. Shelburne Falls.
- Q. Where were you living last December? A. December?
- Q. Yes. A. '96?
- Q. Yes. A. North Adams.
- Q. Last December, 1896, where were you living? A. North Adams.

Q. Now, where did you work before you went to North Adams?
A. Shelburne Falls House.

Q. In what capacity? What were your duties? A. Shelburne Falls House, table waitress.

Q. And did you ever use your sister Minnie's trunk for any purpose? A. I did; yes, sir.

Q. For what? A. I had an old pocketbook in there in which I kept my earnings; if I had any left, I would save and put away.

Q. And did you have a pocketbook in that trunk when you left Shelburne Falls and went to North Adams? A. I did; yes, sir.

Q. Do you remember about how much money you had in it then?
A. I don't remember just how much; no, sir.

Q. Approximately could you tell somewhere near? A. Well, I should say perhaps about \$10.

Q. And how long ago did you go to North Adams? A. I think it was three years ago last April.

Q. And where did you work in North Adams? A. At the Wilson House.

Q. And did you return home at any time during the time you worked at North Adams? A. I did; yes, sir.

Q. And at any time that you returned from North Adams, did you ever have occasion to use that pocketbook that you kept in Minnie's trunk? A. Yes, sir, I did.

Q. And for what? A. I would go and put my money in, if I had any left after buying my clothes, to spare, I would put it in.

Q. Did you ever take any out? A. Yes, sir; I did.

Q. When did you take money out from the pocketbook, the last time that you remember? A. The last time I took any out was Decoration Day, 1896.

Q. And how much did you take out then? A. Fifteen dollars.

Q. And how much had you left in the pocketbook then? A. Ten seventy-five.

Q. Do you know what the denominations of the money was that you had left in the pocketbook then? A. I do; yes, sir.

Q. What was it? A. It was a ten-dollar bill, and I think it was a fifty-cent piece and a quarter.

Q. After Decoration Day, 1896, did you visit your home again?
A. I did; yes, sir.

Q. When was it? A. Came home in July.

Q. What did you put in the pocketbook, if anything, then?
A. Five dollars.

Q. Did you come home again? A. I did, yes, sir.

Q. When was that? A. October.

Q. Did you have any occasion to go to the pocketbook then?
A. Yes, sir.

Q. And what did you do then? A. I put \$7 in.

Q. And at Christmas time do you remember going home then?
A. Yes, sir.

Q. Do you remember where you were in the house then when you had occasion to use the pocketbook, if at all? A. Yes, sir.

Q. Where were you? A. I was in the sitting room in my father's house.

Q. And do you remember what took place there? A. I do, sir.

Q. In relation to the pocketbook? A. Yes, sir.

Q. Will you please state it to the jury, just as it was? A. My sister Rose was going up stairs, I don't remember just what she was going after. I got her the key, and asked her if she would go to the trunk, unlock it and bring the pocketbook to me. She did so. I took from the pocketbook I carried with me and put into this pocketbook, carried the pocketbook up stairs, locked the trunk, came down, put the key in the cup in the cupboard.

Q. Now, will you state to the jury when was the next time that you had occasion to go to that pocketbook? A. It was in February, after the preliminary hearing.

Q. And will you state to the jury whether or not there was then in the pocketbook the same amount of money there was at Christmas time? A. No, sir.

Q. Will you state to the jury whether or not there was any money missing from the pocketbook then? A. Yes, sir; \$22.

Q. And will you state whether or not you took the money out of the pocketbook at Christmas time when you put the \$5 in — the money that was in there? A. No, sir; I did not.

Q. And will you state how you put the five-dollar bill into the pocketbook? A. I just simply tucked it side of the other.

Q. How was the other money in the pocketbook? A. It was rolled up; I noticed the ten-dollar bill on top; I thought it was all there; didn't take it out to count it.

Q. It was rolled up? A. Yes, sir.

Q. And what did you find when you went to your pocketbook next time to look at it, in February? A. Five dollars seventy-five cents.

Q. And is this the pocketbook? A. Yes, sir.

Q. And is that the condition in which you found it? A. Yes, sir.

Q. What did you then do with the pocketbook? A. I brought it back to the trunk, locked the trunk and it has been there ever since.

Q. Why did you go to the trunk in February? A. My sister —

Mr. KNOWLTON. Wait a minute.

SHELDON, J. I don't see as that is competent.

Q. Do you know what has become of the money? A. No, sir; I don't.

Q. Do you know that it is gone? A. Yes, sir.

Q. What did you go to your pocketbook for in February? A. My oldest sister, who has always had —

Mr. HAMMOND. That is the same thing. It is objected to.

Mr. DOWLIN. Won't you state what you went to your pocketbook for?

Mr. KNOWLTON. I object to that.

SHELDON, J. Excluded.

Q. Did you have occasion to go to your pocketbook in February?

A. I did; yes, sir.

Cross-examination.

Q. (by Mr. KNOWLTON). What did you find there when you went there in February? A. Five seventy-five.

Q. Had you kept any memorandum of the amount? A. No, sir; I had not.

Q. The fifty-cent piece and quarter were still there, were they? A. It was; yes, sir.

Q. No silver had been taken from the pocketbook? A. No, sir; I think not.

Mr. PARKHURST. If your Honors please, a time has now come when we desire to have a little consultation.

Mr. KNOWLTON. Before you begin this, I would like to have Rose recalled just for one question.

ROSE O'NEIL — *recalled.*

Re-cross-examination.

Q. (by Mr. KNOWLTON). What time of the day did you say this was that the pocketbook was got out on Christmas Day? A. I think it was about 4 o'clock.

Q. In the afternoon? A. Yes, sir.

Q. Had Tom been home all day? A. My brother Tom?

Q. Yes? A. Yes, sir; I think he had.

Q. All day long? A. I don't know whether he had in the morning or not; he was there at dinner.

Q. There at dinner? A. Yes, sir.

Re-direct Examination.

Q. (by Mr. DOWLIN). Had you had your dinner Christmas Day when you saw the pocketbook? A. Yes, sir.

Q. And was it after dinner? A. Yes, sir.

Q. And do you know definitely the time you had your dinner?
A. I do not.

Q. And you are giving the statement to the best of your knowledge? A. Yes, sir.

NELLIE O'NEIL — *recalled* — *Re-cross-examination*.

Q. (by Mr. KNOWLTON). Miss O'Neil, along in January were you owing any money in Shelburne? A. In '96 or '97?

Q. '97. A. No, sir.

Q. Do you remember getting a letter from a lawyer asking you to pay a bill in January? A. No, sir; I don't.

Q. Mr. Mansfield? A. Not in '97.

Q. When was it? A. '96.

Q. What time in '96? A. I don't remember just the month.

Q. About what time in the year was it? A. Well, I think it was in the fall.

Q. The fall of 1896? A. Yes, sir.

Q. How much was the bill? A. Four dollars nineteen. Mrs. Koonz's.

Q. Do you remember replying to the letter? A. Yes, sir.

Q. Do you remember telling him you had no money? A. No, sir; I don't.

Q. Do you remember saying you would like to pay it a dollar a month? A. Yes, sir.

Q. How much money did you have in your wallet at home at that time? A. I don't remember.

Q. That fall? A. I don't remember.

Q. How much did you have there the first day of November?
A. '97?

Q. '96. A. Well, I don't remember.

Q. Can't you tell me? A. No.

Q. Take all the time you want and then tell me. A. Well, sir, I don't remember.

Q. The first day of October, how much did you have there?
A. Twenty-two dollars seventy-five cents.

Q. The first day of October? A. Yes, sir.

Q. The first day of November, do you think you had more?
A. No, sir.

Q. The same in November? A. Yes, sir.

Q. '96, I am talking about, last fall. Did you have the same in December? A. Yes, sir.

Q. How much did you have with the five-dollar bill? A. Twenty-seven dollars seventy-five cents, I suppose.

Q. Then you had how much, do you think, the first day of November? A. November, 1896, do you mean?

Q. Yes. A. Why, twenty-two dollars seventy-five cents.

Q. What was it, in what denominations? A. I don't remember.

Q. Do you remember any of it? A. Yes, sir; I remember I had a ten-dollar bill, because I saw it.

Q. I didn't ask you why you did it, I asked you if you remembered it? A. Yes, sir.

Q. How long had the ten-dollar bill been in there? A. A long while. It was one of the first bills I had there.

Q. How much did you have when you took that out? A. Ten dollars seventy-five.

Q. When did you take it out? A. Decoration Day, 1896.

Q. This bill that you didn't pay has since been paid? A. It is paid now, but not from that money.

Q. You didn't pay it then? A. No, sir.

Adjourned.

EIGHTH DAY.

JULY 27, 1897.

The roll of the jury was called, and the prisoner answered to his name.

Mr. PARKHURST. May it please the court, I am authorized by the Attorney-General to state that Messrs. Beer and Dowlin would testify, should they take the stand, that the prisoner never said to them what it is claimed was said to them, by Curtis, one of the witnesses. I have now to say that the defendant rests his case.

Mr. HAMMOND. If the court please, I offer evidence of Mrs. O'Neil at the district court. By agreement, it may be read from the stenographer's report.

Referring to Friday night, Mrs. Catherine O'Neil testified: "Q. And after supper did some of them go away? A. Yes, John went away. Q. John went out first? A. Yes, sir. Q. About what time was that? A. Well, I should think he came and got his supper about 6.30 and then left the house. Q. Which of them went first? A. John. Q. And which one next? A. Rose, I think." Referring to Saturday, Mrs. Catherine O'Neil testified: "Q. He had dinner when he did come? A. I told him to go into the buttery and get him something to eat. Q. Did he tell you anything about the Mrs. McCloud matter? A. No, we talked just as we had all day about it, and he spoke about what an awful thing it was. Q. Whether or not he told you anything about any remark that Mr. Crittenden had passed about it? A. Well, I believe he did speak about it; there was some lady in there, and he said, 'Mr. Crittenden says, she died in a fit.' Q. This was about 1 o'clock? A. Yes, sir. Q. That was what you thought up to that time? A. Yes, sir, that is all we heard up to that time, that she died in a fit."

That is all from that report.

THOMAS A. LUCAS — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Thomas A. Lucas.

Q. What is your occupation? A. Stenographer.

Q. Whether or not you took the evidence at the inquest in this case, held on January 19 and 20, at Shelburne? A. I did.

Q. It was held in the Buckland town hall? A. Yes, sir.

Q. Did you take the testimony of Mrs. O'Neil? A. Yes, sir.

Q. Have you both the printed book of evidence and your notes?
A. Yes, sir.

Q. Will you turn to it, if you need to, to refresh your recollection, and state whether or not she said anything as to John's condition at supper time on Friday night, and his manner? A. Read from my notes?

Q. Refresh your recollection, and give it in any way.

Mr. BEER. I would like to see the shorthand notes myself.

THE WITNESS. What is it you want?

Q. (by Mr. HAMMOND). How he ate supper? A. "Q. And then what? A. He ate his supper as usual; I could not say how much he ate, he had a little drink in him, but he never said anything to me, drunk or sober."

Q. Go on. As to the amount of drink, did she state? A. "Q. The amount of drink did not prevent his sitting at the table properly? A. No, indeed, he was not what you would call drunk."

Q. That is all. Whether or not she stated as to the manner in which he left the house, and the time at which he left? A. "Q. Then the boys did not go together? A. No. Q. About how long after John went was it that Thomas started? A. Well, I do not know as Thomas got out much before 7 o'clock."

Q. Just previously to that, did she state the time John went out? About half a page previous to that, whether or not she said anything in reference to his manner of going and the time? I refer to John. A. "Q. About what time in the day did he walk out? A. I should think it must have been very near 6.30."

Q. And the previous question and answer to that same one. In answer to the question, — "Tell us what happened after supper." Read the question immediately preceding the 6.30. A. "Q. You say that he sat down to supper; tell us what happened after supper? A. Well he went out and got his coat and hat, and walked back to the stove and lit his pipe, and he never said anything and walked out."

Q. Going on, did Mrs. O'Neil state when Rose left the house, and with reference to the time Thomas left? Read the questions and answers. A. "Q. Then who? A. Thomas. Q. Then? A. Rose. Q. Then? A. Eddie. He would not go until his father went."

Q. What, if anything, did Mrs. O'Neil say as to John's condition and statements when he came home to dinner on Saturday noon? A. "A. Then John came home at noon and he was under the influence of drink, and we got to talking it over, as anybody would in the house. He said: 'Mr. Crittenden says he thinks she died in a fit, and that is the talk they have now.' And he didn't seem to know, and he didn't say whether he had been there or not. Q. About what

time did John get home? A. About 1 o'clock; he didn't come in just at dinner time. Q. He didn't get in until after the little children had eaten dinner? A. No. Well, when he was drunk, he would not be very regular. Q. Now, give all the talk you had with John about it, and all the talk you had with other people. A. I did not say any more to him about it. Q. Just what did he say about what people supposed? A. He said that people supposed she died in a fit, that Mr. Crittenden said she died in a fit, just as we had all heard through the afternoon, and it was the rumor of all, I think. Q. How long did John stay at home? A. Not but a short time; I should not think more than half an hour."

Mr. HAMMOND. I offer the testimony from the same report, on the 150th page, the evidence of Thomas O'Neil.

[Mr. Dowlin offering to admit the statements in the report, as this witness has been ill.]

Mr. HAMMOND. He was asked the question: "Who went out first that night after supper," referring to Friday night. "A. My brother John. Q. Who went out next? A. I think I did."

Mr. HAMMOND. Also the testimony of Rose O'Neil at the inquest. Referring to Friday night, Rose O'Neil was asked: "Q. What was John's condition at the supper table? A. He was all right, as far as I noticed. Q. Ate his supper in a natural way? A. Yes, sir. Q. And whether or not you noticed whether there was any evidence of his having taken any liquor? A. Yes, he did have some drink. Q. Whether there was anything unnatural in his manner? A. No, I did not notice anything out of the way. Q. Now, of the people that were there, who left first after supper? A. Johnnie. Q. About what time did he leave? A. I should judge 6.30. Q. Did you see him leave the house? A. I did. Q. How was he dressed? A. He had on a long overcoat and slouch hat, and I think a blue shirt. Q. John left first, at what time? A. About 6.30. Q. Who left next? A. I left next, about 7.15."

Mr. DOWLIN. I would like to have the stenographer turn to his notes, on this point of the time.

THE WITNESS. What part? Do you want me to read the whole thing, all of it?

Mr. BEER. No, I would like to see your shorthand notes at that point, that last inquiry.

THE WITNESS. Which one, Mr. Beer?

Mr. BEER. That 7.15. [Counsel examined notes.]

Mr. DOWLIN. Are you through with him?

Mr. KNOWLTON. Yes.

Mr. HAMMOND. I think that, as they have not seen the report, I ought to state to the court that at the very end of her examination

she made a different statement. I would like to have you know it, and you can read it. At the end of her examination she made the statement differently.

Mr. DOWLIN. At page 143 of the same examination is the following testimony: "Q. You are sure it was John? A. Yes, sir. Q. At what time? A. Five minutes of 7. Q. When did you next know of John? A. I did not see him again that night. Q. How do you fix the time when you did see him? A. When I left my home, it must have been ten minutes of 7, or a quarter of 7, and it takes me about ten minutes to walk down street."

Mr. HAMMOND. That is all.

EDWARD E. LYMAN — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Edward E. Lyman.

Q. You are judge of the district court in this county? A. I am.

Q. Whether or not you held the inquest in this case at Buckland, January 19 and 20? A. I did.

Q. Whether or not Mrs. Catherine O'Neil testified before you? A. She did.

Q. Will you state, if you can recollect it, whether or not she said anything about John's going upstairs on that Friday night after supper? A. She did not.

Q. What did she say as to his going, if anything? A. Well, she said that he put on his coat and went out.

Q. What, if anything, did she say as to John's condition, whether drunk or not at supper time, Friday? A. Why, she said he had a little liquor, but he wasn't drunk.

Q. What, if anything, did she state as to the time when John left the house? A. Half-past 6.

Q. What, if anything, did she state as to what John said, when he came home Saturday noon, concerning the death? A. Well, she said that he said that the talk was, or that people said something of that import, that she died in a fit.

Cross-examination.

Q. (by Mr. PARKHURST). Judge, have you read over the testimony that was taken at that inquest since it was taken? A. I have read portions of it.

Q. When? A. Last evening.

WILLIAM S. ALLEN — *sworn*.

Q. (by Mr. HAMMOND). Your name? A. William S. Allen.

Q. You are the clerk of the district court in this county? A. I am.

Q. Whether you brought a record of conviction with you? A. I did.

Q. Will you state what you have? A. I have a record of the conviction of John Flynn for drunkenness at Montague on the 30th of November. He was fined \$5, paid the fine, and was discharged. And on the first day of January John Flynn was arraigned for drunkenness at Montague, pleaded guilty and was sentenced to six months at the House of Correction, and was committed.

Q. Those are the only ones? A. Those are the records.

GEORGE SOMERS — *re-called*.

Q. (by Mr. HAMMOND). What is your name? A. George Somers.

Q. Do you know Thomas O'Neil? A. Yes, sir.

Q. And Edward O'Neil? A. Yes, sir.

Q. And John? A. Yes, sir.

Q. Whether or not you were down street on the Friday night before Mrs. McCloud's body was found? A. Yes, sir.

Q. And whereabouts were you? A. On the bridge.

Q. Did you see any of the O'Neils whom I have named? Did you see Thomas? A. Yes.

Q. When did you first see Thomas? A. I met him over the other side of the bridge.

Q. Did you have any talk with him? A. No, sir.

Q. Did you notice whether he had any one with him? A. No, I did not.

Q. What occurred when you met him? What happened? Did you walk along with him? A. Yes, sir.

Q. Well, then, what happened? A. Walked right along with him.

Q. Did you talk with him as you walked? A. Yes, sir.

Q. Was there any one else with him? A. I think there was Eddie O'Neil and George Atkins.

Q. And which way were you walking? A. Coming towards Buckland side.

Q. While you were crossing over the bridge, did you see anything of John O'Neil? A. No, sir.

Q. Did Thomas make any remark to you at all about John O'Neil? A. No, sir.

Q. Did you know at all of John O'Neil's being met there at that time? A. No, sir.

Q. Did he ever call your attention to it? A. No, sir.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. PARKHURST). Do you know that John O'Neil was not on the bridge there when you were there with Tommy? A. What, sir?

Q. [Question repeated.] A. I didn't see him.

Q. Do you know that he was not there? A. No. [Objected to.]
SHELDON, J. Whether he is able to say, from his memory.

HOMER S. CUDWORTH — sworn.

Q. (by Mr. HAMMOND). What is your name? A. Homer S. Cudworth.

Q. Were you on Bridge Street, Shelburne side, the Friday night before Mrs. McCloud's body was found? A. Yes, sir.

Q. And about what time? A. About mail time; half-past 7.

Q. Whether or not you recollect seeing James Kennedy and John Ryan, one or both? A. Yes, sir.

Q. When first did you see them? A. About 7.25.

Q. Where did you see them? A. In front of the post-office.

Q. Whether there was any one else with them? A. Mr. Fenton.

Q. Reuben Fenton? A. Yes, sir.

Q. Whether you had any talk with them? A. Yes, sir.

Q. And whether you went anywhere with them? A. Yes, sir.

Q. Where? A. To the barber's shop; in front of the barber's shop.

Q. What did you do there, if anything? A. Oh, we stood there and talked for a few minutes.

Q. As near as you can say, how long? A. Ten or twelve minutes.

Q. While the four were there in front of the barber's shop talking, whether or not you saw anything of John O'Neil coming up with a party? A. No, sir; I did not.

Q. Whether you saw anything of John O'Neil standing there in that vicinity at all? A. No, sir.

Q. When first, if at all, did you see John O'Neil that evening?
A. Between 8.15 and 8.30.

Q. Where? A. In the pool room.

Cross-examination.

Q. (by Mr. PARKHURST). How many boys were in your company as you were standing in front of the barber's shop? A. Four.

Q. Who were they? A. James Kennedy, John Ryan and Reuben Fenton.

Q. What were you talking about? A. I was talking with Reuben Fenton about my cousin that worked in Haydenville.

Q. When did you first make up your mind that you did not see John O'Neil there? A. I didn't see him at all.

Q. When did you first make up your mind that you did not? [Objected to.] A. I have not had my mind fixed that way at all.

Q. When did you first say you didn't see him there? A. I don't remember saying so at all.

Q. Did you ever say so until you took the stand here? A. I said some one spoke for a cigarette, and I didn't notice who it was.

Q. Can you swear the person who asked for a cigarette was not John O'Neil? A. No, sir; I cannot.

Re-direct Examination.

Q. (by Mr. HAMMOND). Whether or not you are well acquainted with John O'Neil? A. Yes, sir.

Q. Knew his form, figure and voice? A. Yes, sir.

CARRIE MEYERS — *sworn.*

Q. (by Mr. HAMMOND). What is your name? A. Carrie Meyers.

Q. How old are you? A. Fourteen.

Q. Whether or not you were out skating on the Friday night before Mrs. McCloud's body was found? A. I was.

Q. Whereabouts? A. Behind Dewsnap's house.

Q. Whether it was across the back road? A. It was.

Q. And whether it was right near that back driveway west of the Dewsnap's house? It is called Union Street, isn't it? A. Yes, sir.

Mr. PARKHURST. Why not let her tell where it was?

Mr. HAMMOND. She said behind the Dewsnap house.

Q. Were any other girls with you? A. Yes, sir.

Q. Who were they? A. Grace Martin, Bertha Needham and Kate Wall.

Q. What time did you go there? A. Quarter of 8.

Q. How long did you stay there? A. Until quarter past.

Q. When you were there, could you see out onto the road? [No answer.]

Q. Look on the map and see if you can find the place where you were skating, the Dewsnap house, and the street? A. [Witness indicates Dewsnap house.]

Q. Point to the place back of the Dewsnap house, where you said you were skating, — west of it. A. Somewhere up here [indicating].

Q. Was it between that and the next house? A. No, sir.

Q. You put your finger between that and the next house. A. [Witness indicates again.]

Q. Was it in the gutter back of the house, where the driveway is? A. Yes, sir.

Q. Where Union Street joins the Crittenden road? A. Yes, sir.

Q. When you were skating there, whether or not you saw anybody passing? A. No, sir.

Q. How long were you there? A. From quarter of 8 until quarter past.

Q. Were you where you could see the Crittenden road? A. Yes, sir.

Cross-examination.

Q. (by Mr. PARKHURST). You were there to skate, weren't you? A. Yes, sir.

Q. And that is what you did? A. Yes, sir.

Q. You didn't spend your time looking over the road to see who was coming or going? A. No, sir.

Re-direct Examination.

Q. (by Mr. HAMMOND). Were you right in plain view of the road? A. Yes, sir.

GRACE MARTIN — *sworn.*

Q. (By Mr. HAMMOND). Your name? A. Grace Martin.

Q. Were you skating with Carrie Meyers and the other girls the night before Mrs. McCloud's body was found? A. Yes, sir.

Q. And was it in the gutter back of the Dewsnap house? A. Yes, sir.

Q. Whether or not it was where you could see the Crittenden road? A. Yes, sir.

Q. Did you see anybody go by there when you were skating? A. Only Mr. Meyers when he went home.

Q. Who? A. Mr. Meyers, when he went home between 7.45 and 8 o'clock.

Q. Mr. Louis Meyers? A. Yes, sir.

Q. You noticed him coming home? A. Yes, sir.

Q. How long were you skating there? A. Why, we went out from Meyers' about 7.45 and we stayed there till about quarter-past 8.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. PARKHURST). You were skating in the gutter? A. Yes, sir.

Q. How wide a gutter was it? A. Why, it was —

Q. About how wide? Compare it with something. A. I should think about two feet or a foot.

Q. And you were skating lengthwise of it, I suppose, instead of crosswise? A. We were skating down, down and up it, all the time.

Q. You were skating there and having a good time, you girls?
A. Yes, sir.

Q. You were not paying much attention to anything else? A. We were looking all the time up the Crittenden road.

Q. Were you? A. Yes, sir.

Q. What were you looking all the time up the Crittenden road for while you were skating? A. To see if anybody went up there.

Q. What was your anxiety about that? Let us see what it was, now. What was your anxiety? A. Carrie Meyers wanted to know when her father went home.

Q. And is that the reason why? A. Yes, sir.

Q. And he went up the Crittenden road? A. He went up as far as his house, and then he turned in.

Q. How far is that? Where is Mr. Meyers' house by the plan there? Can you tell? A. I don't know the street.

Q. There is the Meyers house, on the street. A. Yes, sir; there is a road.

Q. Yes, there is a road there, and which way were you skating?
A. And we were skating up this way.

Q. What road is that? A. I don't know; we didn't know the road.

Q. Is there a road there? A. Yes, sir.

Q. Really a road? A. Yes, sir; what the teams go up as far as Schontag's.

Q. How long were you skating in this gutter? About how long were you skating there in the gutter? A. Well, it was from 7.45 and after 8 o'clock.

Q. How do you know it was 7.45? A. Because we looked at Meyers' clock when we come out.

Q. And you were doing nothing but skate? A. Yes, sir; we was only skating all the time.

Q. Did you have your skates on when you went out? A. No, sir.

Q. Put them on out there? A. Yes, sir.

Q. And did you take them off there? A. Yes, sir.

Q. Well, now, you were behind Mrs. Dewsnap's house while you were skating, weren't you? A. Yes, sir.

Q. So you couldn't see the road in front of her house? A. No; we could see it on the back.

Q. You could see out back of the house, a little corner of it?
A. Yes, sir.

Q. But you were not looking at that road all the time were you?
A. Yes, sir.

Q. All the time? A. Yes, sir.

Q. Were you looking at it while you were skating away from it?
A. When one was skating, we was looking at it.

Q. Well, now let us see; didn't you skate along the gutter both ways? A. Yes, sir.

Q. Well, now, when you were skating away from the road, with your back turned toward the road, you could not see it, could you?

A. Some of us could.

Q. But you couldn't, could you? A. No, sir.

Q. And so there was some portion of the time that you were not looking at the Crittenden road while you were skating? A. Some other girls saw it.

Q. I am asking you. You didn't look at the Crittenden road all the time? A. No, sir.

Q. When you were skating from it, and your back turned toward it, you were not looking at it? A. No, sir.

Q. You were paying, on the whole, rather more attention to skating than to looking at the road, weren't you? A. Yes, sir.

Q. If you had wanted to do nothing but look at the Crittenden road, you wouldn't have put on your skates and gone into the gutter to skate, would you? How is that? You went to skate, and you did skate, didn't you? A. Yes, sir.

Mr. PARKHURST. That is all.

Re-direct Examination.

Q. (by Mr. HAMMOND). And how many pairs of skates for the four girls? A. One.

Q. And when one was skating, what were the other girls doing? A. Looking at the road.

Q. What was Carrie Meyers' father's name? A. Louis.

Q. Was he the man? A. Yes, sir.

Mr. HAMMOND. That is all.

Re-cross-examination.

Q. (by Mr. PARKHURST). Did you notice when Mr. Meyers got home, what time it was? A. We went and — we went by —

Q. What time was it when you saw Mr. Meyers come home? A. Between 7.45 and 8 o'clock.

Q. Well, you left the skating gutter at 7.45, didn't you? A. No, sir.

Q. What time? A. We left it after 8 o'clock.

Q. After 8 o'clock. What time? How much after 8? A. I think it was about quarter-past 8, and then we went in Wall's.

Q. And when did you go out there to skate? A. Seven forty-five.

Q. Well, then, if Mr. Meyers got home at 7.45 and you went out to skate at 7.45 — A. He come between 7.45 and 8 o'clock.

Q. What is that? A. He come home between 7.45 and 8 o'clock.

Q. Oh, between that time? A. Yes, sir.

Q. Whom did you talk with about this case? A. I didn't hear you.

Q. Don't you know whom you talked with before you came here to court? A. Talked with Mr. Fisher and another one.

Q. Mr. Fisher. Who is Mr. Fisher, — the detective up in Shelburne Falls? A. Yes, sir.

Q. When did you talk with him? A. I think two or three weeks after.

Q. And have you talked with him since? A. No, sir.

Q. Talked with anybody since? A. No, sir.

Q. When were you summoned to come here to court? A. Week before last; I was away when they summoned me.

Q. How long have you been here? A. Five days.

Q. Have you talked with any of the State detectives, when you come to think of it? A. No, sir.

Q. Only Mr. Fisher? A. There was another man with him but I didn't know his name.

Q. What sort of a looking man was he? Do you remember? A. No, sir.

Q. Was he an old man or a young man? A. I can't remember.

Q. Can't remember? A. No, sir.

Q. What did they ask you? What did Mr. Fisher ask you? Something about the case? A. Yes, sir.

Mr. PARKHURST. Well, I guess that is all.

BERTHA NEEDHAM — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Bertha Needham.

Q. Whether or not you were, with other girls, skating in the gutter back of the Dewsnap house, west of it, Friday night, January 8? A. Yes, sir.

Q. And about what time did you go there? And how long did you stay? A. We went there about quarter to 8, and stayed till quarter-past 8.

Q. And how many pairs of skates had you between you? A. We had only one pair.

Q. And when one was skating, what were the others doing? A. We were learning Katie Wall to skate.

Q. How many girls altogether? A. Four of us, Grace Martin, Kate Wall and Carrie Meyers.

Q. And yourself? A. Yes, sir.

Q. Did you see any one go past up the Crittenden road while you were there skating? A. I saw Mr. Meyers go along, that was all.

Q. Where did he go? A. He went home.

Q. And was that turning up the road you were skating on? A. Yes, sir.

Cross-examination.

Q. (by Mr. PARKHURST). How soon did you see Mr. Meyers go home after you went out to skate? A. We had been out there about five minutes.

Q. And you left the house to go skating at 7.45, quarter of 8? A. Yes, sir.

Q. So it was about ten minutes of 8 when he went home, was it? A. Yes, sir.

Q. And was his daughter there in the party? A. With us?

Q. Yes. A. Yes, sir.

Q. And she saw him go home, I suppose? A. Yes, sir.

Q. With the rest of you. And after that did you have any further occasion to watch the road at all? A. Why, we was on that road; we didn't see anybody else.

Q. No, you didn't see anybody else; but you had no occasion after that to watch the road, or to look? You were skating and having fun and a good time? A. Yes, sir.

KATIE WALL — sworn.

Q. (by Mr. HAMMOND). What is your name? A. Katie Wall.

Q. Were you out skating with three on Friday night, January 8? A. Yes, sir.

Q. And was it in the gutter west of the Dewsnap house? A. Yes, sir.

Q. And did you have one pair of skates for four girls? A. Yes, sir.

Q. When you were there, whether you saw anybody go up the Crittenden road or not? A. No, sir.

Q. Whether you saw anybody turn into the road back of the Dewsnap house? A. We saw Mr. Meyers go up and go in his house.

Cross-examination.

Q. (by Mr. PARKHURST). Do you know what time you went out to skate? A. It was about quarter to 8.

Q. Did you look at the clock? A. No, sir.

Q. How do you know it was quarter of 8? A. I am sure it was.

Q. What makes you sure? A. I don't know, but I think it was about that time.

Q. Well, instead of being sure, you don't know, but you think. Now, what makes you think it was about quarter of 8? A. Be-

cause it was about 7 o'clock when I went out to Mrs. Meyers' and we stayed there quite a while.

Q. A matter of estimate with you, then. It was 7 o'clock once, and then it might be quarter of 8 when you went out there? A. Yes, sir.

Q. Now, how long had you been out there when you saw Mr. Meyers go to his house? A. We were not out there, I don't think, ten minutes.

Q. How much? A. I don't think we were out there ten minutes when he went up, it was round 8 o'clock.

Q. He went along very soon after you went out? A. Yes, sir.

Q. And you didn't see anybody else go up the road? A. No, sir.

Q. You didn't look, did you? A. No, sir.

Q. And how far is it from the gutter where you were skating out to the road here? You were skating back of the Dewsnap house. How far would it be out to the road — if you will look at the plan — back of the house?

Mr. HAMMOND. West of the Dewsnap house was the testimony that the gutter was; not between the houses.

Q. (by Mr. PARKHURST). Well, how far would it be, little girl, as nearly as you can tell? A. About four yards, I should think; it was across from the Dewsnap house.

Q. And how long did you stay out there skating after you saw Mr. Meyers going home? A. We went in after 8 o'clock; I think it was about a half an hour we stayed.

Q. You were playing there and having a good time, all of you? A. Yes, sir.

REUBEN FENTON — *re-called*.

Q. (by Mr. HAMMOND). Reuben Fenton. You have before been on the stand? A. Yes, sir.

Q. Whether you were at the post-office on the Friday night, January 8, in company with James Kennedy and others? A. Yes, sir.

Q. And John Ryan. And about what time were you at the post-office? A. About half-past 7.

Q. Was there anything that indicated the time to you? A. No, sir.

Q. Did you hear the bell ring when the mail was open? A. No, sir.

Q. From the post-office whether you walked away together? A. Yes, sir.

Q. How many of you walked away together? Name them. A. John Ryan, myself and James Kennedy.

Q. Where did you go? A. We went towards the bridge.

Q. Well, did you stop anywhere? A. Stopped on the corner, the other side of the pool room.

Q. Near what shop? On the south side of the road? A. Yes, sir.

Q. Between the pool room and the bridge? A. Yes, sir.

Q. How long did you stop there? A. About ten minutes.

Q. While stopping there, did John O'Neil come up to your party?
A. I don't remember seeing him.

Q. Did you see him at all while you were standing there at the end of the bridge? A. No, sir.

Q. You knew him by sight? A. Yes, sir.

Q. When first that evening did you see him? A. I can't place the time, but it was in the pool room, about 9 o'clock, I remember seeing him.

Q. What is that? A. About 9 o'clock when I first remember seeing him that evening.

Q. And in the pool room? A. Yes, sir.

Cross-examination.

Q. (by Mr. PARKHURST). When you young men were standing at the south end of the bridge, near the barber shop, how many were in your party? A. Three of us.

Q. Did somebody step up and ask one of your party for a cigarette? A. No, sir; not as I remember.

Q. You don't remember that, do you? Do you know that somebody didn't do that? A. Well, I didn't see him.

Q. Do you know that that person wasn't O'Neil? A. I don't remember seeing O'Neil.

Q. And you don't remember whether somebody did come up and ask one of the party for a cigarette? A. No, sir.

Q. You only know that you don't remember it? A. That is all.

Q. You didn't notice it? A. Didn't notice it.

Q. Well, weren't there four in your party? A. I don't remember of the other fellow; all I remember is two.

Q. Well, I didn't ask if you knew his name, but weren't there four of you there together? A. No, sir; not as I remember.

Q. Weren't two of the party talking together, and you standing away talking with somebody else, or away from the two who were talking? A. All I remember with me is two other fellows.

Q. I know; but weren't you standing away from those two fellows, quite a ways from them, while they were talking? A. No, sir.

Q. Were you standing right near them all the time? A. I think I was.

Q. Are you sure? A. Pretty sure.

Q. Certain? A. Quite certain.

Q. Will you swear that? Will you swear that you stood right by the two who were with you, and didn't separate from them when you were there at the end of the bridge? Will you swear to that? A. Didn't separate from them?

Q. Yes, and go away from them, quite a ways, several feet? A. Oh, I might have been several feet from them.

Q. Well, say fifteen feet? Will you swear you didn't stand at least fifteen feet from them quite a while, while they were talking? A. Yes.

Q. And you looking up and down the street? A. Yes.

Q. Now, what do you mean by, "Yes?" Were you fifteen feet away or not? A. I was not, I don't think.

Q. Well, I am asking you what you will swear to about it, not what you think about it. Are you able to swear that you were not at least fifteen feet away from them while they were talking? A. No.

Q. My associate suggests another question. Who were those with you, their names? A. James Kennedy and Johnnie Ryan.

DAVID DAVIS — *recalled.*

Q. (by Mr. HAMMOND). You have before been on this witness stand? A. Yes, sir.

Q. Whether or not, when you were in the county jail here at Greenfield, awaiting trial, you had any talk with Bowers or Flynn or Carroll concerning the O'Neil case? A. I did not, whatever.

Q. Whether you had any talk with either of them concerning the case of any other person? A. I did not.

Q. Whether to any one you suggested that you would testify in the O'Neil case, so as to help your sentence? A. I did not, to no one.

Q. Whether there was any such talk had by you when you were in the county jail at Greenfield? A. There was not.

Cross-examination.

Q. (by Mr. PARKHURST). You recollect the Valitsky case? A. Yes, sir; I recollect —

Q. That is all, sir.

Re-direct Examination.

Q. (by Mr. HAMMOND). Did you ever talk about it with these men in reference to the O'Neil case? A. No, sir.

JOPHANUS H. WHITNEY — *sworn.*

Q. (by Mr. HAMMOND). What is your full name? A. Jophanus H. Whitney.

Q. You are one of the State police force? A. Yes, sir.

Q. Whether or not you have from time to time been employed upon this case? A. I have.

Q. And whether or not at any time you had an interview with Joseph Atkins? A. I did.

Q. Will you state what he said to you? A. I think it was along towards the evening of the Tuesday following the eighth of January.

Q. That the day of arrest? A. The afternoon of the day on which O'Neil was arrested. He was arrested before I arrived there. When I arrived there, Mr. Atkins was one of the first that was interviewed at our room at the hotel. He was asked if he saw O'Neil on the Friday night. He said he did. I asked him to state the circumstances, and begin when he quit work. I asked him to give a narrative of where he was after he quit work. He said he quit work about half-past 5, and in going home he met John O'Neil and three other gentlemen near Ward's corner. He was asked who the gentlemen were, and he said they were strangers to him; he didn't know who they were, with the exception of Mr. O'Neil; and from there he went directly home to his supper, ate his supper and returned down to the village, to the pool room, and that when he went into the pool room he saw John O'Neil there, about 7 o'clock. I then asked him if he stayed in the pool room all the rest of the evening, and he said no; that he went out to the post-office about half-past 7, and that he then returned to the pool room. He was then asked if Mr. O'Neil was there then, he said he was. And he was then asked if he was with the party in front of the bank on Friday night. I told him I had understood that he was in the party in front of the bank when Mr. O'Neil had shown the money. He denied that he was in front of the bank, saying that he went home at about 9 o'clock that evening. His father and mother were at home, and they could say that he was abed. That was practically the substance of the first interview. After we had interviewed a number of other witnesses, the next day, I saw Mr. Atkins on the sidewalk and asked him to come to the room, that I would like to have some further conversation with him. He came to the room, and Mr. Rhodes and Mr. Hammond were present, and I told him I would like to have him tell his story over again; that since I had examined a number of other witnesses, and they did not seem to connect with his story. He then went over the story similar to what he had told the night before, and then I says to him, "Are you sure you saw him there when you got there at 7 o'clock?" He says, "Yes." And now I says to him, "All the other witnesses have said that John O'Neil was not present." Then he says, "It must have been after I had been to the post-office and returned." "Now," says I, "which way will you have it? At either the first interview

or this you have lied to us." He says, "I did lie to you." I says, "I think you did lie." Mr. Rhodes spoke to him and said, "You are a pretty good friend to O'Neil, aren't you?" He said, "Yes." He says, "You would do anything in your power to help him?" He said, "Yes." He says, "You would lie for him?" He said, "Yes, I will, and swear I saw him there about that time." That is all. Oh, at the second interview I then pressed him about who the parties were with O'Neil, and he said that one of them was Jim Wood. Said I, "Who were the other parties?" Said he, "I couldn't tell you." Said he, "I don't know their names." Said I, "Did you ever see them before?" He said, "I think I have seen them before." Said I, "Were they dressed up as if visiting from out of town?" And he says, "Yes."

Q. That is referring to whom? A. Three men he saw with him Friday night.

Q. At Ward's corner? A. At Ward's corner.

Cross-examination.

Q. (by Mr. PARKHURST). You are a State officer? A. Yes, sir.

Q. How long had you been on the force? A. On the State force?

Q. Yes. A. Ten years and upwards.

Q. When did you begin to work up this case for the government?

A. I arrived in Shelburne Falls on the Tuesday following the death of Mrs. McCloud.

Q. And have you been somewhat closely identified with it ever since? A. Yes, sir.

Q. You have seen witnesses and talked with them? A. Yes, sir.

Q. Have you ever had occasion to give witnesses your version of what they knew? A. No, sir.

Q. You didn't hesitate to tell this witness that you thought he was lying to you? A. No, sir.

GORDON H. JOHNSON — *sworn*.

Q. (by Mr. HAMMOND). Your name? A. Gordon H. Johnson.

Mr. HAMMOND. By leave of the court I will ask this witness to step down, and I will complete with the State officers. We will find it more convenient. [Calling a witness.] Mr. Rhodes.

MASON, C. J. Is this witness who stepped down within the exception agreed to by counsel to remain in the room?

Mr. KNOWLTON. No, sir; he should go out.

Mr. PARKHURST. Now, Mr. Rhodes was in the room while Mr. Davis was testifying.

Mr. DOWLIN. I have seen him in the room here right along day after day.

FREDERICK A. RHODES — *sworn*.

Q. (by Mr. HAMMOND). Your full name? A. Frederick A. Rhodes.

Mr. DOWLIN. We understand, your Honor, that this witness is offered to contradict the statements of a witness that were made here, and he has been in court every day here right along.

Mr. KNOWLTON. Yes, sir; ever since the statement was made on which we proposed to call him, he has been excluded, was excluded at once, and has remained outside ever since.

SHELDON, J. Prior to the statement —

Mr. KNOWLTON. He has been excluded ever since.

SHELDON, J. If the government excluded him as soon as it was known that he was to be a witness, it will come within the rule. It has been held that if a witness was not excluded as soon as it was known that he might be called, it might be improper for him to testify.

Q. You are one of the State police officers? A. District police.

Q. You have been detailed to work upon this case from time to time since early in January? A. Yes, sir.

Q. Whether at any time you had any talk with John Ryan? A. I did.

Q. State what he said to you? A. Well, I was present at the conversation; I didn't make the conversation myself.

Q. Very well. A. It was a week ago last Friday, at Shelburne Falls, in company with Mr. Hammond. Mr. Hammond asked him if he saw John O'Neil on Friday night, January 8, and he said he did. He asked him where and when, and he said in front of March's barber shop, at quarter of 8. He then asked him if he saw him at any other time that evening, and he said he did not. He asked him if he knew anything more about the matter, and he said he did not.

Q. Did he at any time mention to you that he had, or claimed to have, seen him at any earlier hour? A. Not at that time.

Mr. HAMMOND. That is all.

Cross-examination.

Q. (by Mr. PARKHURST). Have you had any further talk with him? A. I saw him later; yes, sir.

Q. When? A. Last Sunday.

Q. Did he then claim to remember to have seen him?

Mr. HAMMOND. I ought to have asked him about Joseph Atkins. I forgot it.

Mr. PARKHURST. I will give way, and let you proceed.

Q. (by Mr. HAMMOND). Did you also have a talk with Joseph Atkins, or hear a talk with him? A. Yes, sir.

Q. State it. A. The Wednesday after the arrest of O'Neil, a conversation was held with Mr. Atkins at the Shelburne Falls House. The conversation led up to where he was that evening, and he stated —

Q. What evening? A. The evening of January 8; and he stated that he saw O'Neil in the pool room, Haller's pool room, between quarter-past and half-past 8. I then said to him, "Well, you lied, then, when you told that you saw him at 7 o'clock?" He said, "Yes, I did;" but he said, "It was 7 o'clock, anyway, and I will swear it was 7 o'clock." Says I, "You are a pretty good friend of O'Neil's, aren't you?" He says, "I am." Says I, "You will lie to get him out of this case?" He says, "I shall."

Q. Is that all? A. Yes, sir.

Cross-examination — resumed.

Q. (by Mr. PARKHURST). Did you believe him when he said he would lie about it? A. Yes, sir; I did believe him when he said he would lie about it.

Q. You had not a particle of doubt about that? A. I hadn't; not a particle of doubt.

Q. Although he said it was 7 o'clock and he swore to it, and should stick to it? A. He said it was between quarter and half-past 8 and he said it was 7 o'clock.

Q. You had the talk with Ryan a week ago last Sunday? A. No, sir.

Q. Last Sunday? A. Yes, sir.

Q. Did he then deny that he had seen O'Neil before half-past 8? A. No, sir.

Q. Did he say that he remembered he did see him before that? A. Yes, sir.

Q. When were you excluded from the court room? A. When Ryan began to testify on the stand, before he told his story.

DANIEL W. HAMMOND — recalled.

Q. (by Mr. HAMMOND). Your name? A. Daniel W. Hammond.

Q. You are one of the State police officers? A. I am.

Q. And you have been on the stand before? A. I have.

Q. Whether you had a talk with Delia Quinn? A. I did.

Q. About how long ago, and where? A. A week ago last Tuesday, at a house near the cutlery, not her own.

Q. Whether or not she thanked you for coming to her? A. She did.

Q. State what she said about that? A. I asked what she knew

about the O'Neil case, and she said that that evening she was on the street and went to the Shelburne Falls House, got there about twenty minutes to 8, and met Rose O'Neil and was with her all the rest of the evening. I asked her if she saw Jack O'Neil that evening. She said she did not. I asked her if she knew anything more about the case. She said she did not. I then said, "I am much obliged to you, Miss Quinn, for this interview," and she said, "I am very glad to have you come and see me," and thanked me. She said she expected some of us to come.

Q. Whether or not you had or heard a talk with John Ryan? A. I did.

Q. When and where first? A. A week ago last Friday.

Q. Well? A. I went to him when we got off the train, went from here, Greenfield, 10.55 train, arrived there shortly after 11, went directly to his house. I stepped onto the piazza of the house, the porch, and rapped at the door.

Q. Any one with you? A. Officer Rhodes. As I did so, I saw a young man up at the back part of the house, and beckoned to him, as no one came to the door, and as he approached I said, "Is your name John Ryan?" He said, "Yes, sir." Says I, "I want to talk with you about the O'Neil case." "Yes." I asked him if he saw O'Neil on the afternoon — on the evening of January 8. He said he did. I asked him where. He said "Down at March's barber shop." I asked him what time. He said it was a quarter to 8. I asked him if he saw him at any other time that evening. He said he did not. Says I, "Is this all you know about this?" Says he, "Yes, sir." I then said, "Do you know a man by the name of Joe Bailey?" Says he, "No, sir." Says I, "Isn't Joe Bailey — Joe Bailey's wife a sister to your mother?" Says he, "I don't know; I will ask my mother;" and he stepped inside of the house. I heard him ask the question. He returned and he said they didn't know any such man. I then said to him, "I am much obliged to you, Mr. Ryan," and walked off.

Q. Did you have a talk with Joseph Atkins? A. Yes, sir.

Q. When first? A. It was late in the afternoon of Tuesday, the 12th of January, the day O'Neil was arrested.

Q. State it and who was present with you? A. Colonel Whitney was there in the room at that time. I think there was some one else. I won't say positively in regard to that; my impression is there was some one else. It was some one we had sent out for him. We asked him in regard to where he was that evening, and he said that he left off work about 5 o'clock, and on his way home, between half-past 5 and 6, he saw O'Neil, with three others whom he did not know, near Ward's corner, and spoke to them and went on home, and got

his supper, came back to the pool room, and got there about half-past 6 to twenty-five minutes to 7, and about 7 o'clock he saw O'Neil. That he left him there and went out to the mail, and when he returned he saw him there. He couldn't say how long he stayed there.

Q. Did you, at a subsequent time, have a talk with him? A. I did, the next day.

Q. State what he said the next day, and who were present then. A. Officers Whitney and Rhodes. And he was asked in regard to where he saw O'Neil that day, and he said he saw him in the pool room somewhere from half-past 7 to 8 o'clock, and that he was there when he came from the mail. And then Mr. Rhodes said, "When you said yesterday that you saw him yesterday about 7 o'clock, you lied, didn't you?" "Well," he says, "I did see him at 7 o'clock, and I say so now. I will swear it was 7 o'clock." Mr. Rhodes said to him, "You are a good friend of O'Neil, aren't you?" "Yes, sir." "And you would do most anything you could to get him out of this scrape?" "Yes, sir." "And you would lie for him if necessary?" "Yes, sir."

Q. That all? A. I don't recall anything more.

Cross-examination.

Q. (by Mr. PARKHURST). He didn't say he would swear to a lie for him? A. He said he would lie.

Q. Did he say he would swear to a lie for him? A. He said he would swear it was 7 o'clock.

Q. Won't you kindly answer my question? A. Yes, sir.

Q. You understand it, don't you? A. Yes, sir.

Q. Did he say he would swear to a lie for O'Neil? A. Not in those words.

Mr. PARKHURST. That is all.

BENSON MUNYAN — recalled.

Q. (by Mr. HAMMOND). You have been on the witness stand before, Mr. Munyan, and have been sworn? A. I have.

Q. One question that was omitted I should like to ask you now, — whether you counted the pennies in her bag and in her wallet? [Objected to.]

Mr. PARKHURST. We will withdraw the objection, if it was an omission.

Mr. KNOWLTON. It was an omission. I examined Mr. Munyan myself, and I did not know of it at the time.

Q. (by Mr. HAMMOND). Did you count the pennies in her bag and in her wallet? A. There were in the wallet a nickle and three cents, three pennies; in the bag loose were eight pennies.

Q. Have you brought with you an overcoat? A. I did.

Q. Can you identify it, whose overcoat it is? A. I cannot.

Q. Whether or not you know as to the one John O'Neil wore when you arrested him? A. I could not swear that that was the coat.

[The defence objected to the coat being shown.]

Mr. KNOWLTON. We wish to show it only in contradiction of some witnesses who said it was light color.

Mr. PARKHURST. We don't object to the overcoat being shown, if it was the one.

Mr. HAMMOND. It is agreed that this is the identical coat worn by the prisoner, and it is offered in evidence.

GORDON H. JOHNSON — *recalled*.

Q. (by Mr. HAMMOND). Your name is Gordon H. Johnson? A. Yes, sir.

Q. You have been sworn? A. Yes, sir.

Q. You are a deputy sheriff of this county? A. Yes, sir.

Q. And have been so a great many years? A. Yes, sir.

Q. You live in Conway? A. Yes, sir.

Q. Have you an extensive acquaintance in Ashfield? A. I know most everybody there.

Q. Whether or not you know David Davis? A. Yes, sir.

Q. Whether or not you know his reputation for truth in the community in which he lives? A. I never heard it called in question.

Q. Whether David Davis is known in the town in which you live, also, as well as in Ashfield? A. Yes, sir.

Q. Whether you ever heard it called in question in either town? A. Never.

Cross-examination.

Q. (by Mr. PARKHURST). Did you ever hear anybody speak of him in reference to whether he would tell the truth or not? A. I have known him myself.

Q. I didn't ask you that, sir. Have you ever heard any one speak of him as to whether he would tell the truth or not? A. I never heard anybody speak of him.

Q. Will you answer the question, please, yes or no? A. You put the question again.

Q. Have you ever heard any one speak of him with reference to his telling the truth or not? A. I have within a day or two.

Q. As far as you know he is a good citizen? A. I never heard anything about him, about his being a good citizen, except he stole the chickens and I arrested him at that time.

Q. Before that, had you known anything against him? A. No, sir.

Q. How much have you known of him?

Mr. HAMMOND. I object to any question, except as it relates to his truth and veracity.

SHELDON, J. The examination should be limited to that.

Mr. PARKHURST. I am aware of that, your Honor. If you will pardon me, I will cease this line. I had in mind something I desired to draw out.

Q. Now, on this simple question of his reputation for truth and veracity, you simply say you have not heard it questioned? A. No, sir.

Q. Nor discussed? A. No, sir.

Q. One way or the other? A. Not till within a day or two.

Q. Did you tell Lawyer Eddy that you would not believe Davis under oath? A. No, sir; I don't think I did; I don't remember telling him any such thing.

Q. Are you sure you did not? A. I don't remember it, sir.

Q. Are you sure you didn't? A. I am very sure I didn't.

Q. Will you swear you didn't? A. I will swear I don't remember that I did.

Q. Will you swear you didn't? A. No, sir; I won't swear either way about that.

CHARLES HOWES — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Charles Howes.

Q. Your residence? A. Ashfield.

Q. Whether or not you have been on their board of selectmen for many years? A. Several years.

Q. Whether or not you are now one of the county commissioners? A. Yes, sir.

Q. Do you know David Davis? A. Yes, sir.

Q. If you know, please state what his reputation for truth and veracity is in the community in which he lived? A. I never heard it questioned while he lived in Ashfield until the last year, when he was arrested for chicken theft.

Q. How many years have you known him? A. Well, he hasn't been in Ashfield but about a year, I should think, not for seven or eight years; he was gone for seven or eight years.

Q. And had you known him previously? A. Yes, sir; I knew him, but never knew much about his reputation any way, — he was a boy.

Q. I will ask when the matter for the arrest for chicken stealing was brought up, was it some time about the 1st of December? A. Yes, sir; about Thanksgiving time.

Q. Did you ever hear it questioned previous to that time? A. No, sir; I don't know as I ever did.

[No cross-examination.]

CHARLES RICHMOND — *sworn*.

Q. (by Mr. HAMMOND). What is your name? A. Charles Richmond.

Q. Your residence? A. Ashfield.

Q. Do you know David Davis? A. Yes, sir.

Q. What is his reputation for truth and veracity in the community where he lived? A. Well, I know he stole chickens.

Q. Well, what is his reputation for telling the truth, or the contrary? A. I never heard anything against him but what he told the truth.

Cross-examination.

Q. (by Mr. PARKHURST). How long has he lived in Ashfield for the past seven or eight years? A. Well, he hasn't been there all the time; he has been away. He has been there — I don't know — I think two or three years.

Q. And where has he been? A. I think — well, I don't know where he has been; I know of his being in Lawrence in that one place; I don't know where he has been.

Q. Within the last seven or eight years has he lived in Ashfield continuously for more than a few months at a time? A. Well, I don't know.

Q. Now, you don't know this man very well, do you? A. Yes, I know him; I know where he lived; I know he lives in Ashfield.

Q. But are you well acquainted with him? A. No, sir; I am not well acquainted with him.

Q. And you don't know where he spent his time chiefly away from Ashfield? A. No, sir; I do not.

Q. You simply know that you have not run across anybody who said anything to you about his reputation? A. No, sir.

Mr. HAMMOND. I will offer in evidence the record of certain convictions. One against John Flynn, at the April term, 1895, larceny from the person; trial; sentence, three months in the house of correction. Another record of the conviction of John Flynn by the name of John S. Flynn, the 12th of January, 1894; convicted of drunkenness; sentence, two months in the house of correction. John Flynn, for drunkenness, 23d of September, 1893; found guilty, and sentenced \$5, which was paid.

Mr. PARKHURST. What was that?

Mr. HAMMOND. Drunkenness.

Mr. PARKHURST. Are these all drunkenness?

Mr. HAMMOND. Two drunkenness and one larceny. William J. Carroll, for adultery, April 28, 1896; plea, not guilty; sentenced

to one year in the house of correction. James Bowers, for an escape; November term, 1896; plea of guilty; sentenced to the house of correction for the term of four months; escaped from the county jail. James R. Bowers, for drunkenness; sentence of this court, July 18, 1895, three months in the house of correction. Complaint against James R. Bowers for drunkenness, in July, 1895; defendant defaulted, and sentenced to three months in the house of correction from and after the expiration of the previous sentence. James Bowers sentenced April 18, 1892, for drunkenness; six months in the house of correction; that was in this court. Disturbing the peace, Nov. 17, 1891; sentence of thirty days in the house of correction. James Bowers, indicted for drunkenness, November term, 1891; plea of guilty; sentenced, Nov. 17, 1891, six months in the house of correction from the expiration of the previous sentence. Complaint against James R. Bowers, being a common drunkard, Aug. 2, 1897; sentence, one year. Indictment against James R. Bowers, August term, 1871; assault with a dangerous weapon, to wit, a stone; verdict of guilty; and sentence of nine months in the house of correction. Complaint, Nov. 21, 1876, drunkenness; fine of \$5 and costs. Another one of the same date, complaint for drunkenness; sentence the same, \$5 and costs.

WESSON E. MANSFIELD — *sworn*.

Mr. KNOWLTON. This witness was not excluded. He is an attorney-at-law. I had no knowledge of what I am going to ask him in attempted contradiction of Nellie, on cross-examination, until yesterday.

Mr. PARKHURST. I don't think we object.

Q. (by Mr. KNOWLTON). What is your whole name, Mr. Mansfield? A. Wesson E. Mansfield.

Q. You are an attorney-at-law? A. I am.

Q. Residing in Shelburne Falls? A. I do.

Q. You know Nellie O'Neil? A. In a business way; I am not personally acquainted with her.

Q. Did you write her a letter to North Adams at any time? A. I wrote her several last fall, sir.

Q. What time in the fall was it, as near as you can remember? A. I think I commenced writing about the last of August, and the last letter I wrote her was dated the eleventh day of November.

Q. And at any time did you receive from her a letter in reply to your letters? A. I did.

Q. Do you know what time that was? A. Well, I received several replies.

Q. Have you kept the letters? A. I have not, none of them.

Q. Have you made search for them? A. I have; I did yesterday.

Q. I call your attention in particular to a letter in which she stated something in reference to her financial ability. Do you recall that letter? A. I do.

Q. You know the date of that letter? A. It was in answer to one written November 11.

Q. Last one you wrote? A. Last one I wrote.

Q. Are you able from memory to state the substance of that letter? A. I am.

Q. I will ask you to do so. A. She says, "I can't pay anything on Dr. Perry's bill until after the holidays, I am so pressed for money. After about the first of January I will commence and pay one dollar a week." She says, "I am in debt, and pressed for payment," and made the remark that when she once got out she knew she never would get in again.

Cross-examination.

Q. (by Mr. PARKHURST). Do you keep copies of your letters? A. No, sir; not of answers.

Q. Do you keep the letters you receive? A. All of importance I do.

Q. Have you destroyed these letters you received from her? A. They went into the waste basket, sir.

Q. Why? A. Well, all that class of letters do; they are not regarded by me as of any particular moment.

Q. Did she pay that bill? A. She sent me one dollar on it the twenty-ninth day of December.

Q. Do you know whether she has paid it or not? A. She has not, more than that.

Q. Do you know whether she has paid Dr. Perry himself? Do you know whether she has or not? A. Well, the bill is in my hands.

Q. Do you know whether she has paid him or not? A. I know he says she has not, — if you wish that.

Q. I asked if you knew whether she had or not. I didn't ask what he said. A. I know nothing that may have transpired between him and her, except what he says.

Q. Did she object to the charge and service that was rendered by Dr. Perry? A. Not at all.

Q. He is a gentleman who practises medicine and also practises law? A. No, sir.

Q. Isn't that so? A. No, sir; he practises dentistry.

Q. Oh, it is another Dr. Perry? A. Dr. Perry of Shelburne Falls, a dentist.

Q. Have you written to Nellie since November 11? A. I have not.

Q. You have not pressed her very hard for that little bill? A. No, sir; I knew the family had all they could carry just then, without.

DR. JOSEPH C. PERRY — *sworn*.

Q. (by Mr. KNOWLTON). Dr. Perry, what is your full name, sir? A. Joseph C. Perry.

Q. You are a dentist by profession? A. I am.

Q. Have a bill or a claim against Nellie O'Neil last year? A. I did.

Q. Did you put it in the hands of an attorney? A. I did.

Q. Who? A. Mr. Mansfield.

Q. And at any time did you see a letter written by her with reference to the bill? A. I did.

Q. Who showed it to you? A. Mr. Mansfield.

Q. Do you remember the date of it? A. I am unable to tell the date.

Q. Did you read it? A. I did.

Q. Are you able to state the substance of the letter from memory? A. I am.

Q. I will ask you to do so. A. She stated that she was hard pressed for money, and requested that we give her further time; stated that at the first of January she would be in and pay one dollar per week until the bill was paid up in full. She further stated that she was badly in debt, and if she ever got out of debt she would remain so. That was the substance of it.

Q. Is that all? Can you tell from memory the date? That is, can you fix any date that it was before or after? A. It was after the 10th of November, I should say; as late as the 20th, perhaps.

Q. What say, sir? A. It was late as the 10th of November and probably about the 20th.

Mr. KNOWLTON. That is all.

Q. (by Mr. PARKHURST). Did she ever find any fault with your bill to you? A. Not that I know of; she never did to me.

Mr. PARKHURST. That is all.

Mr. KNOWLTON. That closes the Commonwealth's rebuttal.

MASON, C. J. The jury may retire with the officers.

Recess.

DEFENDANT'S SUB-REBUTTAL.

JAMES KENNEDY — *recalled*.

Q. (by Mr. DOWLIN). Your name? A. James Kennedy.

Q. You have testified in this case before? A. Yes, sir.

Q. When you were in front of the barber shop on Friday night,

January 8, did you see where Reuben Fenton and Mr. Cudworth were standing? A. What do you mean, — when we stood in front of the shop?

Q. When you heard some one ask for a cigarette, and saw a person that you thought was O'Neil? A. Yes, sir.

Q. Where were they standing? A. At the corner of the barber shop.

Q. How far were they away from you and Ryan, to your best judgment? A. Well, I should say between ten and fifteen feet.

Q. Which would you have it, ten or fifteen? A. Ten.

Q. And were their backs turned to Ryan? A. Yes, sir.

Q. And were you standing with Ryan? A. No, sir; I started to walk towards the corner.

Q. You was just leaving Ryan? A. Yes, sir.

Q. And walking towards them? A. Yes, sir.

Mr. DOWLIN. That is all.

Mr. KNOWLTON. No questions.

JOHN RYAN — *recalled.*

Q. (by Mr. DOWLIN). Your name is John Ryan? A. Yes, sir.

Q. You have testified in this case before? A. Yes, sir.

Q. When you talked with O'Neil in front of the barber shop on Friday night, were Reuben Fenton and Mr. Cudworth standing with you? A. No, sir.

Q. How far away were they from you? A. Between ten and fifteen feet.

Q. Were they standing facing you? A. No, sir.

Q. How were they standing? A. Cudworth was standing with his back turned towards me.

Q. How was Fenton? A. He was standing against the building, kicking his feet.

Q. Were Fenton and Cudworth in conversation between themselves? A. Yes, sir.

Q. And how near you was James Fenton? A. Fenton?

Q. Not Fenton, but James Kennedy? A. He was standing with those two, and he started to come over towards me, and he came to me, and started back.

Q. Had he just started back when O'Neil came up? A. Yes, sir.

Q. Was there any other reason than the one you have stated here why you didn't talk with Detective Hammond when he had his first interview with you?

Mr. KNOWLTON. I pray your Honors' judgment.

SHELDON, J. I think that matter was gone into before, Mr. Dowlin.

Mr. DOWLIN. I didn't know of it till this morning.

SHELDON, J. Well, if it has just come to your knowledge.

Mr. KNOWLTON. I object.

SHELDON, J. You have cross-examined him on this point.

Mr. KNOWLTON. I asked him the fact, not the reason.

Mr. DOWLIN. I have asked him if there was anything to add to it, why he had not denied. You asked if he denied, and then you asked a question, I believe, which called out the exact conversation which took place.

Mr. KNOWLTON. I had a right to.

Mr. DOWLIN. It is a matter, your Honor, that has just come to our knowledge this morning.

SHELDON, J. That is not the ground on which the objection is put. As far as that is concerned, we should admit it. You may ask the question, taking only the general statement of the witness, not going into detail.

Q. (by Mr. DOWLIN). Was there any other reason than the one that you have already stated why you made the statement that you did to Detective Hammond when he first interviewed you? A. I don't understand your question.

Q. Was there any reason than the one that you have already stated why you made the statements that you did to Mr. Hammond at his first interview?

Mr. KNOWLTON. I object. It is not in reply to any testimony. I would like to have you produce it. I have the cross-examination here, and I see no reason given whatever.

Q. (by Mr. DOWLIN). I will put it in another way, a direct question. Did any one advise you not to talk with any one? [Objected to.]

SHELDON, J. I don't think that is competent.

THE WITNESS. No, sir.

SHELDON, J. You need not answer the question until you are told to answer.

Q. (by Mr. DOWLIN). Will you explain why you made the statement you did at the first interview that you had with Detective Hammond?

Mr. KNOWLTON. Your Honor, the situation is this. This witness gives testimony on the stand. His attention is called to whether he had made other statements to Detective Hammond. He denied that he had made other statements to Detective Hammond in his cross-examination. Now, Detective Hammond is called, and says that he did make those statements. Now the witness is asked why he made those statements.

SHELDON, J. There is a manifest inconsistency in the witness giving a reason why he did a thing which he says he did not do.

Mr. DOWLIN. He qualified his answer of not doing it by giving the exact conversation that took place as he remembered it, and that was his explanation at that time.

SHELDON, J. You may ask him if he wishes to make any change in his testimony.

Q. (by Mr. DOWLIN). Do you desire to make any change in the statement that you made to Detective Hammond? A. No, sir.

CHARLES F. A. EDDY — *sworn*.

Q. (by Mr. DOWLIN). What is your name? A. Charles F. A. Eddy.

Q. Where do you live? A. Greenfield.

Q. Are you a practising lawyer here? A. Yes, sir.

Q. A member of this bar? A. Yes, sir.

Q. And are you acquainted with Gordon H. Johnson? A. Yes, sir.

Q. Deputy sheriff? A. Yes, sir.

Q. Have you had any talk with Mr. Johnson as to the general reputation for truth and veracity of David Davis? A. Well, not exactly in that form; I had a conversation relative to David Davis with Gordon Johnson.

Q. Relating to his truth? State what it was.

Mr. KNOWLTON. No; wait a minute.

THE WITNESS. Relating to his reputation.

Mr. KNOWLTON. Wait a minute. If it related to his reputation for truth, I don't object.

SHELDON, J. If it is the same about which you inquired of Mr. Johnson on cross-examination, I don't see how it tends to contradict his testimony. The question asked of Mr. Johnson was not what Mr. Johnson himself thought, or whether he would believe this man or not, but what the man's general reputation was. If you have anything that will contradict Mr. Johnson's testimony on that point, of course it is competent, but Mr. Johnson's individual opinion of his honesty is not material.

Mr. PARKHURST. If your Honors please, I asked Mr. Johnson, the witness, if he had not stated to Lawyer Eddy that he wouldn't believe Davis under oath, and that question was not objected to and became a part of the record. And then he couldn't say whether he told him that or not; he didn't think he did, and he wouldn't swear that he didn't. Now, it had seemed to me at first sight to be competent to show by Mr. Eddy, if we could, that Mr. Johnson had made that statement to him.

SHELDON, J. If there were any immaterial questions put on cross-examination, this immaterial question was not objected to, and so it

was answered; but it is a familiar principle that you cannot contradict immaterial answers.

Mr. PARKHURST. Well, if your Honor will pardon me, it occurred to me that that answer was not immaterial, because it tended to affect the statement of the witness himself. It had a tendency to affect what he said about Davis. It struck me so; but if the court thinks that is not competent, I do not wish to urge it.

SHELDON, J. I do not see how it legally affects the testimony of the witness. If the witness testified under a misconception, that would affect the value of his testimony, of course; but we cannot suppose that he did, now. Of course Mr. Johnson would not have been allowed to testify to his opinion of Davis' truthfulness or lack of truthfulness.

Mr. PARKHURST. Well, if that is not competent, I don't think we ought to press it.

Mr. DOWLIN. No, we don't care to press it if the court rules it out. That is all.

Mr. KNOWLTON. That is all. There is nothing in reply.

SHELDON, J. That closes all the evidence?

Mr. KNOWLTON. Our side, sir.

CLOSING ARGUMENT FOR THE DEFENDANT.

Mr. PARKHURST. Gentlemen of the jury: The evidence is now in; and I feel, as you must, and all who have had the responsibility of this case, great relief that so much, at least, has been accomplished. But a further and great responsibility yet remains; and that is, to determine from this evidence whether the prisoner at the bar is guilty beyond a reasonable doubt.

When this case began, — and I think I am justified in making this explanation, — counsel for the defence were not satisfied that either a murder or an outrage had been committed, and consequently considerable time was spent in the cross-examination of the government's medical experts; but as the case proceeded it began to be very plain to us, as it must be to everybody, that a horrible murder and a brutal outrage occurred; that Mrs. McCloud was the victim of a man's greed and a man's passion, one or both. And so the defence makes no contention upon the question of the murder of Mrs. McCloud; it admits it and deplors it; but that fact being admitted, — and it is proved if it were not admitted, — the sole question is, not, "Who did it," but, "Did the prisoner at the bar do it?" Does the evidence, do the circumstances, taken all together, satisfy you that he did it? That, gentlemen, is the single substantive inquiry growing out of all this mass of evidence that has been piled up here by the government and by the defence. Upon its face it would seem to be a simple question,

and yet it involves a careful weighing and examination of the large volume of the evidence, a consideration of the appearance and character of an unusually large number of witnesses on the one side and the other.

Now, it may be worth while to consider, briefly as may be, what the government claims to be true in this case, — to be established by the evidence. I don't propose for one moment to present, or to attempt to present, the case of the government, for that will be done with commensurate skill and ability by the Attorney-General of this Commonwealth. But that we may understand this case as we go along, I trust you will pardon me if I consider somewhat the claim of the government, — what it must be upon this evidence; for I must ask you to go so far as to find that, taking the government's case by itself, without any defence being made whatever, it is insufficient to warrant a verdict of guilty of murder in the first degree; because this evidence, voluminous as it is, is cumulative to a large extent. But few substantive and material facts bearing upon this question are proven, although there are any quantity of witnesses, any amount of evidence, as to certain little facts in the case.

Now, then, we find, and we ought to know pretty well about it by this time, that O'Neil lived here on Green Street. The body was found up here on the Crittenden road, a little more, if I remember rightly, than a quarter of a mile from the O'Neil house.

In the first place, gentlemen, the government has not shown John O'Neil, the defendant, to be nearer the scene of that tragedy than his own house on Green Street. Isn't that so? What witness has been introduced to show John O'Neil upon that Crittenden road, or any farther up toward the Crittenden road than his own house? Now, that is a fact, gentlemen, which I submit is worth remembering. It is worth while also to remember that from the O'Neil house, by any road you may take, it is something over a quarter of a mile to where the body was found, and it is up hill to go there.

The government shows where Mrs. McCloud was on Thursday. There is no dispute about it, gentlemen. That she was down in the village of Shelburne Falls on Thursday, that she got her check cashed, that she made some purchases, is not disputed. Nor is it disputed that she ought to have had left, after making those purchases and paying those bills, the sum of \$15.50 or \$15.55 in money on Thursday. Now, the material inquiry is, "Where was Mrs. McCloud Friday evening?" The first witness which the government introduces was Carrie E. Winterhalter, who saw Mrs. McCloud between 5 and 6 at Amsden's store, Friday night. Then Fred H. Amsden, the proprietor, saw her in his store the same evening at about 5.30. Mrs. Andrews didn't

see her till late in the afternoon, but saw her going down Clement Street to the village.

Then Minnie Smith saw her Friday evening in Smith's bakery, between 5 and 6. She bought some cookies, paid 20 cents for them, and the cookies were taken away in a paper bag.

Fred W. Amstein saw her at Amstein's store, on the Buckland side, and she exchanged cookies for Graham wafers and bought two oranges. The wafers were done up in a bag, the oranges also. One bag she put in her satchel and the other she carried in her hand. Mr. Amstein saw her have no money, but the 6 cents she paid for the oranges.

The next witness is Earl Duncan, a twelve-year-old boy. He saw her on Ashfield Street. That is this street here; it is also the State road up there. He saw her at about five minutes past 6. She was walking in the direction of Clement Street, and she had bundles. Now, that is the first time, gentlemen, if I remember rightly, that she was seen on Clement Street or near Clement Street; five minutes of 6, going towards Clement Street. That is probably near Ward's corner.

Then Frank E. Tatreau, the carpenter, living on the Buckland side, saw her Friday evening at Ward's corner, going up Clement Street, at a quarter of 7. I would like to have you note that, gentlemen. Tatreau the carpenter, living on the Buckland side, saw her going up Clement Street. You see she had got away from Ashfield Street, or the State road, and was going up Clement Street, at a quarter of 7. That is important, for reasons that you already know, or will hear about later on. He was behind her. He lived at the house of Mrs. Schontag, at the head of Clement Street. Here is Schontag's house, here is Clement Street. She was coming up, he was behind. There is where he stopped. The moon was up when he saw her. It is admitted, gentlemen, I may say, that the moon was a quarter moon, lacking two days, on Friday evening, January 8.

Then Edward Schontag, a young man nineteen years old, saw a woman whom he thought was Mrs. McCloud in the middle of Hill Street. That, I suppose, is up here. That was Friday evening at about 7 o'clock. He was driving in a road cart. You remember those two boys, I think, both of whom testified they had a cart and were going up the street, and went by a woman walking in the road, they thought was Mrs. McCloud. They didn't speak, nor did she speak, and neither of them noticed her particularly; they simply took the woman to be Mrs. McCloud. Of her identity you must judge yourselves, remembering that it was dark, save for the light that came from a quarter moon.

Louis Meyers knew Mrs. McCloud by sight only. He says he met a woman on Clement Street Friday evening a few minutes after 7. It was by the lamp post. He could not swear it was Mrs. McCloud, you remember, nor could he tell how she was dressed. The most he would say was that it was a woman. He saw her body in the woods the next day, and still after that he could not say that it was Mrs. McCloud that he saw the night before. Now, it is not for me to dispute whether this was Mrs. McCloud or not. It is for you to say, if you can. If you say it was she, you must be aided by some other circumstances in the case, or else you can say what the witness could not; he could not tell it was she. He did not know. It was a woman coming up the street, and after this terrible tragedy occurred, and his attention was brought to where he was that night, he remembered seeing this woman that he thought was Mrs. McCloud, but he did not know. Now, I am not disputing, I say, that this was Mrs. McCloud; I am not saying it was. I am suggesting to you that the burden is on the government to show that it was she. It is one of the facts in the case that are doubtful, because the person who saw that woman was himself in doubt, and still is, whether it was she or not. It is one of the things, gentlemen, that you run against, that may trouble you, because it is not clearly, satisfactorily and certainly proven.

Now we come to the testimony of Mrs. Ellen Dewsnap, the old lady seventy years old, who wore glasses, but thought her eyes were just about as good as they ever were. Now, she saw her, as she thought. She lives, if you remember, on Green Street, right up here [showing]. She had been accustomed to seeing Mrs. McCloud go up and down, and had a speaking acquaintance with her; and this night, Friday night, just as she was out closing the shutters to her dining room, she saw a woman going by who she thought was Mrs. McCloud. It was her impression. That was her opinion. You are called upon, gentlemen, to say whether that was Mrs. McCloud or not. Upon the life of this prisoner at the bar you are called upon to say whether that was Mrs. McCloud. On that testimony, too, you are called upon to say it, as you are other hard facts in the case.

Now, the next witness is Anna Morse, who lives on the Shelburne side, and who says that she met Mrs. McCloud near the silk mill on Bridge Street at 6.05, going up the street. What does this mean? Why, it means that she met her away over here [showing], on the Shelburne Falls side at 6.05, going in an opposite direction from her home. Well, she was not sure that that was Mrs. McCloud. She could not tell for certain, but it was her opinion; she was more or less satisfied that it was Mrs. McCloud, just as much as these other

witnesses were. Now, was Mrs. McCloud over there going in that direction? It is another fact that you have to pass upon, and all the information you have upon it is what the government has given you by the testimony of the witness Morse whom they have put upon the stand.

Now, Miss Morse testified to another thing of grave importance in this case. At 7.30 on the Ashfield road — which is down here [indicating on map] — she saw a man behind her as she was going down to the village. Before reaching the crossing — which would be here [indicating] — she turned two or three times and looked over her shoulder, but did not get a look at the man's face. He had on a long coat, reaching nearly to his feet. The collar was turned up. She didn't notice what he had on his head. He was a tall man. She didn't know who he was. She had no opinion who it was then, nor had she on the stand any opinion as to who it was. She had an impression that she saw another man crossing the street and turning off the State road — which is up here [indicating]. She saw O'Neil the next day, and now imagines that he looked at her sharply. Now, gentlemen, if I estimate rightly the claim that will be made here by the government, you will be asked, upon the testimony of Anna Morse and what may follow it, if there be anything, to find as a fact in this case, — as a fact, proven beyond reasonable doubt, — that the man that Anna Morse saw on Ashfield Street was the prisoner in the dock. If it were the prisoner in the dock, it is the strongest piece of testimony that the government has introduced in this case; and yet it would not be conclusive, or free from any reasonable doubt that you will have to exercise later on. Here is the spot where the body was found [indicating]. It is but a short cut comparatively down through the woods onto this road here, then up that way into the village [indicating]. So if you should find upon the testimony of Anna Morse that O'Neil was down here, and on this road, it might be a strong circumstance against him, and you will be asked to find that. Now, let's see whether you can or not. Anna Morse did not see the man's face. She did not see whether he had on a hat or cap. He did not speak. She did not speak. All that she knew was that he was a man, — that is what she said, — that he was a man. He had on a long ulster, and it was turned up about his neck; and she imagined after that murder that John O'Neil looked at her sharply, and she imagined it in this court room; but, gentlemen, you are not dealing with imagination, when a man's life is at stake; you are dealing with hard, cold facts, that make and establish issues.

Gentlemen, would you like to have your life hang upon the thread of Anna Morse's statement? Would you like to have somebody claim that you or any one of you were on that Ashfield road, upon

the testimony of Anna Morse, who could only testify that she saw a man behind her, and a man with a long coat, near down to his heels? Gentlemen, John O'Neil is not the only man, I suggest, upon your common knowledge, that wears an ulster coat in the winter, a coat that comes down toward his feet, nor the only man, either, who is well built and six feet tall, who wears an ulster. From that fact, from that fact of the long coat and his height, can you find, can you say, that it was he and no other? It is a part of the government's claim, but it is a part of the government's claim that is not proven, not established, that remains in doubt. It is a fine theory, gentlemen, to say that that was O'Neil, and that he went right along down Ashfield Street and the State road and was found at the Woodward Hotel about such a time. It is a fine theory, but it is not based upon a fact that is proven, as facts should be proven in a case like this. Your premise must be right, or your conclusion cannot be. If that was not John O'Neil, then the fact that a man passed along there is of no significance in this case; and the fact that Anna Morse saw a man walking along there whom she did not recognize, whom she did not know and whom she did not think she knew, does not establish the fact that it was John O'Neil, and you cannot so find it. Nor can you find it, gentlemen, by the aid of the further statement, later on, that John O'Neil was going down Depot Street in the same general direction as this would be. That is another fact, but it is not necessarily connected with this fact. He might have reached that place from many different directions, and not from this [indicating the junction of Ashfield Street and the old Ashfield road].

The strength of the chain is its weakest link. That is an old saying, with which we are all familiar; but you must take these facts by themselves alone, and see whether each one of them is proven and established, before you place them side by side with the other facts that you know are established to make the chain of circumstantial evidence upon which the government depends.

Now, gentlemen, at great pains, and that there might be no mistake, I have tabulated from the evidence in this case the different times when, the persons by whom, and the places where, Mrs. McCloud was seen on that Friday night, and I want to give you the result of it.

First seen by Carrie E. Winterhalder, at Amsden's store, between 5 and 6 o'clock; seen by Fred H. Amsden, in his store, at 5.30 o'clock; by Mrs. Thomas Andrews, Clement Street, late in the afternoon, going to Shelburne Falls; by Minnie Smith, at the bakery, between 5 and 6; Fred W. Amstein, at Amstein's store, at 5.50, ten minutes before 6; Earl M. Duncan, Ashfield Street, 6.05; Frank Tatreau, Ward's corner, 6.45.

Now, there is something strange, gentlemen, when you come to look at it. Undeniably and unquestionably at Smith's bakery between 5 and 6, as shown by the proprietor and his clerk, under circumstances that admit practically of no dispute; then she is seen by Frank Tatreau, at Ward's corner, at 6.45; by Edward Schontag, in the middle of Hill Street, at 7; by Louis Meyers, on Clement Street, a few minutes past 7; by Ellen Dewsnap, going up Hill Street, about twenty minutes before 7; and at the silk mill at 6.05.

Now, gentlemen, those are the whereabouts of Mrs. McCloud on Friday evening; that is all the information you have about her whereabouts on Friday evening, when she was murdered.

Now, when, upon this evidence and in your judgment, did Mrs. McCloud probably reach the spot where she was murdered?

Every witness introduced by the government, save one, Earl M. Duncan, who saw her on Ashfield Street at 6.05, places her going up Clement Street and up in the vicinity of the Crittenden road between 6.45 and 7 o'clock. Now, if she went up Clement Street, if these witnesses are right in their statement that they saw her, and were not mistaken in her identity, then, as the case stands, as claimed by the government, she was up here at Mrs. Dewsnap's about 7 o'clock, perhaps a little before, — probably a little before, — according to the testimony of Mrs. Dewsnap and of Schontag, and of Meyers who saw her on Green Street. That is her whereabouts.

Now, we will stop that part of the discussion for the present, and see something about the defendant. You have already observed that, so far as the government's evidence in this case goes, O'Neil starts to go home a little after 6 Friday night from Ward's corner, and he does not appear in his accustomed haunts until about twenty minutes of 8 Friday night.

The first witness of the government who saw O'Neil after quarter-past 6 that night is Mr. Kendrick. He meets him on the bridge, the Shelburne Falls bridge; and Kendrick says that after leaving O'Neil on the bridge, after talking with him awhile, and crossing over the bridge here, going down to some place on Bridge Street, and delivering a couple of cans of milk to different people, and going into the post-office to get his mail, and turning up his collar and getting ready to go home, looking up at the clock, he saw it was ten or twelve minutes of 8.

Mr. BEER. Twelve.

Mr. PARKHURST. Twelve minutes of 8. Thank you.

Now, if you deduct the time Kendrick spent talking with O'Neil on the bridge about the anchor ice, — you remember that — about getting a job in the cutlery, — you remember that, — and going down Bridge Street to certain places and leaving cans of milk, and empty

cans, and going to the post-office and getting the mail, if he had any, and looking it over, if he had any, and getting ready to leave, — why, you are going to find, gentlemen, on the claim of the government itself, that it was about half-past 7 — not later than half-past 7 — that O'Neil was there on that bridge. Now, then, if this is so, see where this case is just for a minute. If John O'Neil committed this crime, he must have committed it after 7 o'clock. Isn't that so, gentlemen? Can it be otherwise, on this evidence? Is it possible, upon this evidence, that Mrs. McCloud ever got to that spot earlier than 7 o'clock? Wasn't it 7 or later than 7? Now, then, if that is so, and she was murdered by John O'Neil, he had to do it between 7 o'clock and half-past 7; not only do it between 7 and half-past 7, but do it and take her money and arrange her body, and leave everything as delicately arranged as a lady herself would, and get back down to Shelburne Falls, and over on to that bridge, in a half hour. Only a half hour, gentlemen, on the claim of the government itself, — or at least upon the evidence of the government. It is impossible for me to say what the government will claim; but on the evidence which the government has introduced, — and you know it yourselves as well as I who state it, — Mrs. McCloud could not have been at this spot where her body was found before 7 o'clock. And if O'Neil killed her, he only had a half hour to do it, if I reason rightly, and get back onto this bridge. And there is further evidence.

Louis Meyers, — a government witness, a witness relied upon, whose statement was taken to be true, because the government would not put a witness upon the stand whom it did not believe was telling the truth. According to the statement of that witness, it was a few minutes past 7 Friday evening when Hattie McCloud was seen on Clement Street, going up that hill. You have been there, gentlemen. You know it would take some time to go a quarter of a mile or more up that hill. So it must be, as the government outlined in presenting its case, between 7 and 7.20 when that murder was committed; and all the evidence which the government has introduced tends to show, and to establish the fact beyond contradiction, that she did not get up to the place where she was murdered much, if any, before 7.30 o'clock. It was after 7 before she got by Ward's corner. By the testimony of the government it was after 7 before she got to Ward's corner and before she passed it. She goes up the hill there as a woman would, with bundles and a satchel, a steep hill. Or, call it 7.10 that she got up there, if you please, if you know. I do not. Then see what the chances are of this defendant having committed that horrible, atrocious murder, that outrage upon a decent woman, that robbery, and getting back down on to that bridge at half-past 7, — in twenty minutes. Is it reasonable, gentlemen?

Is it reasonable, is it right, is it certain, that in twenty minutes a man could choke to death, and ravish, and rob, and drag through the woods, a woman in that way, taking her money from her, bundles untouched, with no sign of a struggle, and be down on that bridge looking placidly at the flow of the Deerfield below, unconcerned, perfectly natural, as he met selectman Kendrick, talking with him about the anchor ice he had observed, — talking with him about getting a job in the cutlery. Oh, gentlemen, can you find on the government's claim that a man could do that, that even John O'Neil, Yank O'Neil, a member of the gang up there in Shelburne Falls, could do such a thing as that in that way? I do not say it is impossible on the government's evidence that he did this, but I suggest to you its absolute improbability. I warn you, and I admonish you, that it is not proven or established. We are here at last to meet the Commonwealth of Massachusetts in this case. This is not an *ex parte* hearing. It is not a hearing before a grand jury of this county. It is not a hearing in the district court, where the question is only one of probable cause. It is the question of the guilt of this defendant beyond a reasonable doubt, to be established by a jury of his peers drawn out of the body of this good county of Franklin; and here we make our defence of John O'Neil, and here we expect and demand justice. Here, gentlemen, the evidence is to be taken. Not suspicious circumstances, not suspicious conduct, not some ingenious theory interjected into this case by the ability of the officers, anxious, of course, only to do their duty, but the facts as proved, as established beyond all reasonable doubt. There is no prejudice, there can be no prejudice. It has sometimes been said that there is a prejudice in a county where a murder case is tried, that men of the same town or of the same county have a prejudice, a feeling against a man charged with crime. That cannot be so, gentlemen, here. I believe it is not so. There is no desire on the part of the government for a victim, nor can there be any feeling against that poor man on your part. You are going to do what you think is right and just and best, according to the evidence, as you understand it. If he is guilty, you will find him guilty; but if you have a doubt about it, you will give him the benefit of that doubt, as you hope to have it yourselves when you appear at a higher tribunal than this.

Now, let us see again what the evidence is as to what O'Neil did that night. I like to read you this evidence, because you are then dealing with facts, — not with something that I am talking to you about, but with the facts, — upon which you must base your verdict under the instructions of the court.

Julius Pfersick, otherwise called "Rattie" Pfersick, saw O'Neil Friday night at 7.45 at the east entrance of the Woodward House. He

was coming down from the railroad track. That is, here is the railroad and here is the street that goes by the depot there, and they call it Depot Street. He said, "Hello, Hex." I have made a mistake. This was not "Rattie" Pfersick, but it was "Hex" Pfersick. "Where are you going?" "Home," says Mr. Pfersick. He afterwards met Kendrick, John O'Neil, according to the claim of the government, meeting Pfersick there on Depot Hill, after having committed this murder a few minutes before, meeting his old friend in his usual, ordinary way, which gained for him the soubriquet of "Happy Jack," — Hello everybody, "Hello, Mrs. Burleigh," "Hello, Hex," "Hello, Rattie," "Hello, Auction, come out here." That was the kind of a disposition that Mr. O'Neil had shown. Now, the next witness is Frank P. Kendrick, the selectman, the man that we have been talking about, on the bridge there. He says, "Saw O'Neil on the Shelburne Falls bridge about 7.45, I should think, and talked with him;" but it was earlier than that. They had quite a conversation. O'Neil was on the Buckland side when he saw him, and he was leaning over the bridge and looking down at the water; and they talked there, not only about the anchor ice, but about a job, and I cannot figure it out any better, and I don't know whether you can, than that it was not later than half-past 7 when he saw him on that bridge.

And here is Samuel Leland, who drank with O'Neil Friday morning at the Woodward House between 8 and 8.10; O'Neil said it was his first drink that morning, and it was mighty good, or something of that sort. Well, now, that came in rather solemn, a good deal of solemnity about it, but what does that amount to, — that O'Neil drank with him at 10 in the morning? It wasn't of any consequence.

Next comes George Heathcote, seventeen years old, who works in the cutlery on a grinding machine. He said he saw O'Neil Thursday. That is something that I will come to later.

Now, without going into the full details of that testimony, you have already seen that almost all the witnesses saw O'Neil in Haller's pool room between 8 and 8.30; all the witnesses in the case knew that he was there, and the government says that he was there. There is no question but that he was there from 8 to 8.30 and later; and then after that they go out on the street, — this crowd, this gang, — he and his chums go out on the street, go up to the bank, to the building, and go up, some of them, to the Shelburne Falls House and drink. The first thing they do is to buy a pint.

MASON, C. J. We will suspend here.

Mr. PARKHURST. The next thing they do is to buy another pint.

MASON, C. J. Mr. Parkhurst, we will suspend at this time.

Recess till 2.30.

AFTERNOON SESSION.

The roll of the jury was called, and the prisoner answered to his name.

CLOSING ARGUMENT FOR THE DEFENDANT — *continued*.

MR. PARKHURST. I believe, gentlemen, at the hour of adjournment I was undertaking to speak of the evidence of the government as to what occurred on that Friday night after O'Neil had gotten into Haller's pool room, and had gotten into the confidence of certain men there. It seems after they had been in the pool room for awhile, several of them went out and began to spend money. The parties who were present a portion or the whole of that time, as I remember it, were Woodward, Wood, Morrissey and the two Hallers. Now, gentlemen, I want to call your attention to the testimony of James Wood, Jimmy Wood, as he is called. He was the young man whom you observed to be so peculiar on the stand, so slow in his answers, and he was the man who came into Shelburne Falls, as I remember it, on a sort of a visit, a vacation; and he was the man — and I speak in all kindness — who started John O'Neil from time to time and from day to day. It was this same Jimmy Wood who stated among his companions on Clement Street, or round about Ward's corner, or in that vicinity, that he had kept O'Neil full since he had been there, and he would keep him full as long as he remained. Now, see how well that promise was kept. In that pool room that night were Dubsey Woodward, Jimmy Wood, Billy Morrissey, English Jack, Auction Haller and Rattie Haller. They come out onto the street. O'Neil has money, and when he has it he is ready to spend it, and they send Morrissey for a pint. They bring it back, and it is drunk. When asked what was the next thing that they did, "We bought another pint." "What was the next thing you did?" "We bought another pint," and so it went through that night. Nothing was done, nothing was talked about, except to buy, to drink, and to talk about it. Now, gentlemen, under those circumstances you have to take the evidence of these witnesses, Woodward relied upon by the government, Morrissey relied upon by the government, English Jack and the two Hallers. What was their condition that night, — the night, the day, that is so important in this case? They began that drunken orgie in the morning. They did not end it until 2 o'clock the next morning, when O'Neil awakened from his drunken stupor in the depot, staggered home, and was let into the house by his old mother.

How much reliance, gentlemen, can you place upon the testimony of those men as to dates, as to facts, as to circumstances, in the con-

dition they must have been in? You know something from your living in this world, from your observation; and you know, I submit, and upon the testimony you must know and find, that these men during that afternoon and on that night, into the next morning, were drinking and drunk, were delirious, irresponsible in a measure, in that condition where it would be doubtful afterwards if they remembered accurately and exactly that which had happened when they were in that condition.

Now, let us take the testimony of Jimmy Wood. He and O'Neil about noon on Friday drank at the Shelburne Falls House twice, and kept drinking that afternoon, at one place and another, till about 6, when they left the Woodward House and went over on to Ward's corner a little before 6, staying there until a little after 6 o'clock. Then they separated, and O'Neil, upon their testimony, and as you may well find, and as I believe you will find, upon the evidence, reeled and staggered down Depot Street on his way home. That was 6 o'clock Friday night. The testimony of Reuben Fenton, Dennis O'Brien, Leon P. Woodward, Lena Schontag, Edward E. Heathcote, Timothy Kennedy, Edward Joyce, William P. Morrissey and a host of others, all bear upon the movements of John O'Neil from Friday morning until Friday night. Not one of those witnesses saw O'Neil after he started for his home a little after 6, staggering, staggering home to his supper. That is the testimony.

Now, what was the condition of O'Neil when he got home at 6 o'clock, or a quarter-past 6? There has been a claim here on the part of the government that O'Neil was not drunk; that his mother at some inquest or at some hearing, in answer to some question or series of questions put to her by the accomplished district attorney, had said that he was not drunk, he had been drinking, but he was not drunk. Now, what is the fact? Coming here to this last and final investigation, not depending upon the statement of Mrs. O'Neil alone, but depending upon the facts and circumstances of the case and the testimony of all the witnesses, what is the fact about his condition when he reached home that evening? He had been drinking since early morning of that day. Pint after pint was bought, and on the testimony of the government's own witnesses, Morrissey and Wood and Woodward, he was so drunk when he left Ward's corner that he reeled and staggered. Now, then, do you believe the testimony of his mother, of his sister and of his brother that when he came home that evening he was full, he was drunk, he was intoxicated? I believe, gentlemen, you will find that when John O'Neil reached his home that night he was the worse for liquor, that he was intoxicated, that he was drunk, — not so but what he could walk, but he was in that maudlin, drunken

condition that a man must necessarily be in when he has drank excessively from morning until night with such companions as English Jack, Auction Haller and Rattie Haller and those fellows belonging to the gang.

Now, he got home, as his family say, at quarter-past 6. The rest of the family had finished their supper. He sat down to the table with his sister Rose, the young lady who testified here yesterday, and with his brother Tommy, and they had supper. Now, it was after 6 o'clock, upon the government's testimony, before he started to go home, perhaps ten minutes past 6. Therefore, in the natural course of things, he would reach his home about quarter-past 6. That is for you to say. Your own judgment upon that is as good as anybody's, and you have a right to exercise it, because you have been over the ground and you can tell and form an opinion as to the length of time it would take him to go from Ward's corner by the ordinary route to his home.

Now, his mother and Rose and Tommy, all the family who were there, say that it took at least fifteen minutes for them to finish their supper. Is that a reasonable time, gentlemen? Is that a reasonable time to be at a supper table? There was Rose, who had worked during the day; there was Tommy, who had worked during the day; and there was John; and they all say, including the mother, that it was half-past 6 at least before they finished their supper. I submit to your consideration that it is a reasonable proposition, upon the government's evidence, that he didn't reach home until quarter-past 6 that evening, and that in the natural order of things he would not have finished his supper before half-past 6, and they all finished it practically together.

Now, Rose O'Neil has testified before some tribunal, not this, and so has the mother, and there has been either some misstatement or some misunderstanding as to time. But even the government do not claim O'Neil left his house before half-past 6. But the family, upon consideration, upon reflection, at this last and final trial of the facts, come in here and upon their oaths tell you that it was at least twenty minutes of seven when John left the house. Now, if he finished his supper at half-past 6, or about that time, then it would take him some time at least to put on his coat, to light his pipe and to get ready to go out down street. But he did more than that. Upon the testimony of his mother, which is uncontradicted, he left the dining room and went out of that dining room door, closing it, and, as she thought, went upstairs. At least, he did not return for about five minutes, and then went back into the kitchen, and finally went down street. Therefore, gentlemen, I submit to you that the probabilities

are, and the evidence is, as far as we can understand it, — I want it right and you want it right, — that he left the house at twenty minutes of 7 that night.

Now, where did he go? It will be claimed by the government, I suppose, that he went off up the Crittenden road with murder in his heart, following up Mrs. McCloud. But, gentlemen, it is only a claim, it is only a theory. It is not the proven fact, for no man, no woman, no human eye, saw him farther up the Crittenden hill, as I said before, than his own home. Can you infer that he went up that Crittenden road? Can you guess it? You are not here for that, gentlemen. You are here to try this case between the Commonwealth and this defendant upon the law and the evidence, upon your oaths and your good consciences. You can not, you will not, guess that man's life away. You will not, and you can not, infer his guilt. It must be proven to you, under the forms of law, by that same law that has held him in confinement for six long months and subjected him to a trial for his life. Did he go up that road? You must say that he went up that road, if you say it at all, with no witness to prove it, with no fact to corroborate it, only because the government claims it, upon the theory of the government, and because there was murder. God forbid, gentlemen, that you should infer or guess, in the absence of proof, and more especially that you should infer or guess against this defendant in defiance of proof, against the proof that is in this case. Now, gentlemen, against the theory and the claim of the government that after his supper that night he went up that Crittenden road and committed this murder and came back again, is the personal knowledge, the absolute knowledge of Johnny Ryan, who saw him on Green Street at quarter of 7 that night. Here he was [pointing on map] down near Depot Hill, at a quarter of 7 sure, certain, no question about it, — seen there by Johnny Ryan; and Johnny Ryan knew O'Neil well. They met on the street, didn't they, gentlemen? And Johnny Ryan gave O'Neil some matches, with which he lighted his pipe in the presence of Ryan, at a quarter of 7, just about the time it would take for him to get from his house up here down towards the railroad crossing. Now, against the influence and the theory of the government is the positive, absolute testimony of a living witness who saw him and who comes into court and swears to it on his oath; an unimpeachable witness; a witness who has not been impeached, and whose impeachment has not been attempted by the government in this case. What are you going to do with it? Are you going to say that the inference of the government that John O'Neil went up the road and committed this murder at that time is stronger than the testimony of an unimpeached witness, who saw him and talked with him five minutes after he left his home, when he was

going away from the scene of the tragedy, and not towards it? Why, they may say that Johnny Ryan is not to be believed. Why isn't he to be believed? What is there against Johnny Ryan that has appeared in this case? He stands as well, so far as we know, as any man in the community, so far as the truth is concerned; and he is not a relative, and he has no interest in the case, beyond that of any good citizen. But they say the detectives have talked with him. Members of the district police have talked with him, and he has either denied or concealed the knowledge that he had. Suppose he did. It does not disturb the fact of what he saw. Young men and sometimes old men do not always do what is right, do not always act with that judgment and discretion under all circumstances that they ought to show; and there may have been reasons why Ryan said to the detectives what they claim, if he did say it. But you are to take this case from the evidence, and here it is unimpeached, looming up, the hand of Providence disclosing the truth in regard to his whereabouts, doing away with theories, clinching the facts, and showing that O'Neil at a quarter of 7 was on his way from his home down toward Depot Street at just about the time he would have been there, leaving his home at twenty minutes of 7.

Now, gentlemen, with reference to the testimony of these detectives, these State officers, I have no comments to make, except that they are partisans in a case like this. It is their business and their duty to go about and find out all they can from various witnesses, and they do it. But they are partisans, nevertheless. Like Rhodes, they are quick to form an opinion that a man is lying to them, unless he tells them what they want to hear. But I put Johnny Ryan's testimony here as a living fact in this case, which you must and will consider, as against a theory. If Johnny Ryan is not a truthful boy, if he is not to be believed, if his reputation in the community in which he lives is bad, if he is not to be trusted, it was within the power of the government, as they have shown it here already, to bring his neighbors and those who knew him to flock to this court house and say that he was a boy that should not be believed, that his reputation for truth and veracity was bad. But no. He is left on the stand as strong, as good, as reliable as any other witness that took the stand. Now, gentlemen, you are confronted with a fact right here, that John O'Neil, on the evidence in this case, on the undisputed evidence in this case, was on Green Street, going away from his home, away from the scene of this murder, and over towards Shelburne Falls, at a quarter of 7, lighting his pipe and chatting with Ryan. That is a fact, gentlemen, to be considered and taken by you into account, and considered with the care and the carefulness that the importance of this case demands.

Now, gentlemen, let us see where he is next seen. His sister Rose, a bright young girl, — you saw her on the stand yesterday, — had an appointment with Delia Quinn, who worked in the peg shop, I think it was, up the road there, up the State road; had an appointment with Delia Quinn to meet her at the Shelburne Falls House that night. That is the testimony. That is the evidence. It is the undisputed evidence in the case. Well, now, what happened? Rose O'Neil looked at her watch as she was putting on her hat before the mirror, and it was twenty minutes of 7 at her home; and after fixing herself up, as young ladies do, when they go out in the evening to keep an appointment, she went on towards the Shelburne Falls House. She crossed the bridge, and there, standing on the side of the street, she saw her brother John. Now, was she mistaken? Did not Rose know her own brother? She knew him. She saw that he had been drinking. She knew he had been drinking, and she told you that when he had been drinking she avoided him. How many sisters avoid their drunken brothers on the street, and for reasons that occur to us all. She saw her brother John standing on the street showing the signs of intoxication, and she avoided him and passed on. What time was it? Why, she arrived at the Shelburne Falls House, not two minutes' walk from there, at 7 o'clock; and so she says to you upon her oath that it was not later than five minutes to 7 when she saw her brother John there. And, gentlemen, in spite of the detectives, in spite of the inquests, public and private, Rose O'Neil has always stuck to that statement that she saw her brother there at five minutes to 7. And in proof, gentlemen, of what I have said to you, that from the beginning she has made that statement, my learned associate has handed me the evidence taken at the inquest, and I will read you the question put to Rose by the district attorney.

“You are sure it was John? A. Yes, sir. Q. At what time? A. Five minutes of 7.”

Now, gentlemen, there is a piece of testimony that is of the greatest and gravest consequence in this case. Can you disbelieve it? On what ground can it be said that that testimony is untrue? It comes from the sister, it is true, but it comes from a sister whose character is above reproach. It comes from a working girl in Shelburne Falls who has never brought shame or disgrace upon her family. It comes from a girl whose face and whose conduct here must be to you, as it is to all, evidence of her truthfulness and of her womanhood. Loyalty to her brother does not compel her to tell a falsehood, but this story that she has told to you she told from the beginning, because it was impressed upon her mind, and was the truth. She told it in the beginning, I say, without knowing or being able to appreciate what effect it might have upon her brother's case; and I

submit to you, gentlemen, that you should take the testimony of Rose O'Neil as the truth in this case, because there is nothing in the case to dispute it, nothing in the previous conduct of the witness to interfere with a belief in it, and nothing about her appearance on the stand that would indicate that she was otherwise than truthful in her statements.

Now, that is five minutes of 7. John O'Neil was next seen on the Shelburne Falls bridge, on the Buckland side, leaning over looking down into the water. When was it? On the testimony of Tommy O'Neil and of George Atkins, another boy with him, it is about 7.18, not more than 7.20, and how do they fix it? As they were walking across that bridge and saw John O'Neil with Kendrick, the New Haven express was crossing the bridge. They saw the train, they saw John, and that he was there then is proved by Kendrick. Wasn't he there on the bridge? Was it later than 7.18 or 7.20? How could it be? There was the Fitchburg express, No. 3, coming across that railroad bridge, on time, as shown by the government, too; and the time was 7.14, if I remember rightly. There was the train, there was John O'Neil and there was Kendrick, and there was Tommy O'Neil and George Atkins who witnessed it. And Kendrick himself says that after he had talked with O'Neil and left him, after he had talked with him about two different things, had quite a talk with him and had gone over onto the Shelburne Falls side and delivered his milk and gone into the post-office and done several things and was ready to go, then by the post-office clock it was only twelve minutes of 8. I don't know how much time Mr. Kendrick occupied, and you don't. But you know that you have the testimony of two witnesses, one of whom is not a relative, that when O'Neil was on the bridge the Fitchburg express was crossing over the bridge, and it could not have been later than 7.20.

Why, gentlemen, the government has not tried to show you where O'Neil was from 6 o'clock till 8.30. Of course it has not, even if it knew, and I don't suppose it did; for if it did, it is presumed it would have shown it, because the government is always fair. But you must not think, because the government does not account for O'Neil from 6 o'clock to 8.30, that he is wiped off the face of the earth, or that he is necessarily up the Crittenden road, doing a foul murder and engaged in a horrible outrage. A man is not presumed to be doing those things, especially when unimpeachable witnesses know where he is and see him and talk with him. There is more to this case than has appeared on the surface. If I were able to analyze this evidence, there wouldn't be any sort of a case for the government; it is weak. It does not reach that degree of proof that connects this defendant with the crime charged. There are too many loopholes, too many

doubts. It is a fine piece of metaphysical work and calculation, and it has been presented with all the strength and force of which it was capable. But tear it to pieces, separate it, and let it be piece by piece, and what is there of it? You do not want to confound the horrible outrage that has been committed, the gruesome exhibit of clothing here, with the question of who did it. They are separate considerations.

Now, here is Eliza Webster Burleigh, a lady that had a little difficulty there at the station in getting rid of some of the girls that were watching to see where she went; and what does she say about it? Why, she says she came in on the Fitchburg train, on the 7.17; came in on that train, got out, gave a parcel to the baggage man for the hotel, met somebody there, spoke with them, and passed along with the girls there. She stopped a moment on the crossing, and she went along, and she watched them until she thought they were going along over the bridge, and she went along. Well, now, how long it took her I don't know. You can judge as well as I, and a great deal better. But what does the woman herself say as to the time when she saw O'Neil? She says, according to her best judgment, it was between 7.25 and 7.30. And where did she see him? The last time we saw him with Kendrick was on the bridge. Rose saw him over here at five minutes of 7, and Mrs. Burleigh saw him here in front of the pool room at 7.25 or 7.30. And, gentlemen, that piece of testimony by Mrs. Burleigh is corroborated by Delia Quinn, the girl who had the appointment with Rose and who was late in her appointment. Instead of getting to the Shelburne Falls House at 7 o'clock, as she had promised Rose, who was there to receive her, she did not get along until 7.30; and a few feet from where Rose saw John standing, there Delia Quinn saw him at 7.30; the same place where Mrs. Burleigh saw him at 7.25 or 7.30. On that street, near the end of that bridge, — the Shelburne Falls bridge. Now, who is Delia Quinn? Why, she is another young lady after whom the State detectives have been, and with whom they have talked. You saw her; you measured her; you sized her up; you have your opinion about that girl. Now, what is it? Why, she was asked whether the State detectives had come and talked with her. She said yes, they had. She was asked whether she told them that she saw John O'Neil that night, and she said she had told them that she had not seen him. Now, that was wrong. That was not right. But does it destroy your confidence in that bright young girl? Does it destroy your belief in her when she takes the stand and swears to tell the truth, the whole truth and nothing but the truth? Does it destroy your confidence in her? Gentlemen, you may have daughters of your own; you may well conceive that a modest and good girl would dread above all things to

come into this court in this case and be obliged to hear what has been said here. It was wrong for her to deceive the State detective, gentlemen, but it was an evidence after all of her modesty and of her character. You can't condemn that girl, gentlemen, under these circumstances. You won't. You know from your own judgment, from your own experience, what kind of a girl Delia Quinn is. You saw her on that stand. A cleaner, brighter, better girl has perhaps not appeared here of late. And she knows that she saw O'Neil there at 7.30. She swears it, under the pains and penalty of perjury. Knowing what she has told the State officers, she comes here fearlessly, yet modestly, and swears to what she says is the truth; and this defendant on trial for his life asks you to believe the statement of Delia Quinn.

Then James J. Kennedy sees O'Neil in front of the railing by the barber's shop at 7.35, — five minutes after. What are you going to do with that? What is the government going to do with it? It is the evidence. It shows where O'Neil was, not by inference, but by evidence by those who saw him.

Then, Joseph Atkins, he saw him at the pool room, at the entrance to the pool room. James Hart and Frank Stemple saw him about the pool room at 7 o'clock. Now, gentlemen, if O'Neil was seen on Green Street at quarter of 7, and was seen over on the Shelburne Falls side at five minutes of 7, at 7, at 7.20, at 7.25, at a quarter of 8, and at 8, did he, or could he, commit this crime? That is for you to say.

Now how long would it take, in your judgment, for O'Neil to leave his house and go up that Crittenden road, murder this woman, ravish her, take her money out of her pocketbook, which was in her satchel, put it back again at the very bottom of the satchel, have everything arranged all nicely, and get back down where he was seen? What do you say about the time it would take? You saw where he was seen. He was seen five minutes after he left his house down on Green Street; he was seen ten minutes after on the Shelburne Falls side; he was seen on the bridge a little later; he was over there all the time. How did he, how could he be on Green Street, be on that bridge, be on Bridge Street, be at that pool room, be around where he was, and at the same time be off up on the Crittenden road committing that awful crime? Impossible, gentlemen. But they do not connect him with it all.

Now, there is some evidence which I dislike to discuss, but I have got to. They put in the testimony of O'Connell, this man whom the government has had in jail here all this time, the man who has been referred to here. They put him on, and he testifies, and when he gets all through, the only thing he says is that on Thursday preceding this murder he was having a talk with O'Neil, and O'Neil told him that he

must have a piece. Now, that is not a very strange thing for a man like O'Neil to say. But what is there in the evidence that justifies you in finding where he was going to get it? Many a young man has made such a statement as that, but those to whom it was made did not understand where he intended to go, or from whom he was to have what he wanted, and oftentimes it is made without any purpose, without any meaning, as a mere low sort of expression; and O'Neil at that time was in just the right condition to say anything and everything, and the meaner it was the better. There is nothing, I submit, that brings it at all into relation with this crime or with this case. But it was one of those elements, one of those facts that have been woven into the web and made a part of the woof to which the learned district attorney referred in his opening as illustrating the force and strength of circumstantial evidence.

Then there is another piece of evidence, of boys about Shelburne Falls, Thursday I think it was, who, standing on Ward's corner, and Mrs. McCloud was passing, and O'Neil says, as Heathcote tells it, — whether it was true or not it is for you to say, — O'Neil said, "I am going up the hill with her some night." Well, does that necessarily mean anything? Taking that as it is, if it is true, does it mean murder? Does it mean anything in relation to this case? It is only another fact and another circumstance, but it shows nothing, absolutely nothing, to connect this defendant with this crime, especially when he has so well accounted for his whereabouts on that night. And, gentlemen, in reference to that conversation with Heathcote there has always been and there always will be a question as to whether that remark referred to Mrs. McCloud or to some of the factory people that were passing up that street at that time, — other women. There is that doubt about it, even if he said it.

Well, now, gentlemen, there is another claim on the part of the Commonwealth, and that is that Mrs. McCloud on the Friday night she was murdered had in her pocketbook \$15.50, and that O'Neil on the night of her murder had about the same amount in substantially the same denominations. Now, let us examine that claim. On Thursday Mrs. McCloud went to Shelburne Falls with two checks in her pocketbook. She had in her pocketbook two checks. One check she got cashed, and according to the evidence in the case she paid out on that day as follows: she got a check cashed for \$39.60; she paid Amsden \$16.53, to Smith 20 cents, to Amstein Brothers 10 cents, to Amstein Brothers again 6 cents, to Mrs. Brown \$4.18, to Mrs. O'Neil for washing \$1.20, to the shoe store \$1.50, and in her purse at the time of her murder was found 5 cents — a nickel — and 3 pennies, making 8 cents, making \$23.85 that she paid out, leaving a balance in her possession on Thursday of \$15.50 less 25 cents, which was the

difference in computing the amounts which she received and the amounts which she expended. Now, the government in opening this case said that they would prove to you that on Friday she had this \$15.50 or \$15.75. Have they proved it? Have they proved that Mrs. McCloud had any money on Friday? It might occur to you that they have proved the contrary, because she got trusted when she came down street Friday, and nobody saw her have any money except the 6 cents she paid for oranges, and she got trusted in small amounts at different places on that day.

Now, this is the claim of the government: that because she had money on Thursday she necessarily had it on Friday. Are you going to accept that? Are you going to say that Mrs. McCloud had no opportunity on Friday to spend the money that she had on Thursday? Does it follow, as a logical proposition, gentlemen, that because I have money to-day I shall have it to-morrow? Can you find as a fact in this case, without any evidence except a theory and a supposition, that because she had that money on Thursday she had it on Friday night when she was murdered? How do you know and how do I know, or anybody else, that she may not have sent that money off to pay some debt or to buy something that nobody knows anything about, or got rid of it in some way? The question is, is it safe for you to infer and find as important a fact as this upon no evidence at all except an inference? You may say, why, if she had it Thursday she must have had it Friday, because they do not show where she spent it on Thursday. Why, that is not necessary. The burden is not upon us to show what she did with that money, or whether she spent it; but the burden is absolutely with the government to prove that she had that amount on Friday night and that this defendant got it from her. There is where the burden is and that is where the pinch is. They ask you to guess at it, to infer it; and the question is, whether on your oaths, gentlemen, you can conscientiously do it, in view of the fact that the evidence shows that she did not pay on Friday for a few little things that she bought down in Shelburne Falls, and in view of the fact also that no money was seen in her purse when she took it out of her satchel to pay for the little things that she bought, while on the day before, when she was known to have money, there was a roll of bills, and people saw it.

MASON, C. J. The jurors may retire with the officers.

Recess.

Now, gentlemen, we come to the consideration of another feature of this case, which is of consequence, as I believe you will find. So far as we know, so far as is proven, two men, strangers and in short

coats, were the only ones seen going up that Crittenden road that night. Ahead of them was a woman, a large woman; and Mrs. McCloud weighed 165, if I remember the evidence. Ahead was a large woman dressed in black, going up that Crittenden road that night. Two men in short coats, strangers, a woman ahead of them, and the men stopping and looking around when they saw these two little girls, Maggie O'Brien and Emma Koch.

Gentlemen, I do not ask you to find that those two men were following Mrs. McCloud, but I say to you in all confidence that all that the government has succeeded in showing here is that a woman was going up the Crittenden road a little after 7, followed by two men, strangers in that vicinity. What it means I don't know. What it is worth I don't know. But there was the woman above Dewsnap's, farther up than Mrs. McCloud was ever identified, but going the same road that she had to go, and two strange men in short coats following her. It is for you to say what significance that has. That it was an important point in this case you can well be satisfied when the Attorney-General of this Commonwealth found it necessary to place upon this witness stand three or four little girls to show that they had been watching the Crittenden road, and didn't see them. But these little girls were skating, and before 8 o'clock Meyers had gone to his home, and then they watched no longer; and those men passed up that road behind the woman, and no human eye saw them but the eyes of Maggie O'Brien and Emma Koch. There was the opportunity, gentlemen. There come in more forcibly than ever before the theory and the story of the hoboes. There they were, two of them, behind the woman dressed in black, going up that lonely road. Who was the woman? What other woman but Mrs. McCloud passed up over that Crittenden road that night? What does it mean? There may be some truth in John O'Neil's statement about his fight with the hoboes, and there may not; but the fact is in this case that the only woman who was seen on the Crittenden road that night was above Dewsnap's, and that these two strangers in short coats were going in the same direction, and stopped and looked round when they saw the two little girls watching them.

Now, gentlemen, who got the money? Was it John O'Neil on this evidence, or was it the two hoboes? I submit to you that there is more direct and positive evidence in this case to-day that those two men who followed that woman up that road were guilty than that John O'Neil is, though he sit in the prisoner's dock. It is true that John O'Neil on Friday night appeared among his cronies, among the gang with money, and that fact caused his arrest and indictment. But he has kept his own counsel; and his old mother and his loyal sisters have done the same, until there was an opportunity under the

laws of our Commonwealth to explain and clear away the doubts. I don't say that John O'Neil robbed his sister Nellie. I leave it for you, gentlemen, to say which is the most probable, — that he would murder a woman for \$15, or that he would take it out of his sister's purse. It is for you to judge. You must pass upon it. It may be said that this testimony in regard to this money comes from the family, and is therefore to be discredited or be taken with great caution. Gentlemen, we are all a great family. It is a whole family here. We are divided into individuals, but the home and the members who compose it comprise and make this Commonwealth and this country; and no evidence that comes from an honest and hard-working home is to be discredited because it comes from that source. What are the facts, — what are the indisputable, incontrovertible facts in relation to this money? Nellie O'Neil, who, like her brother John, has been obliged to go out to service and labor for her living outside of her home since she was able to do it, has, like many another girl, kept a little money, as she says, by her for a rainy day. She could not earn enough as a waitress at a table to dress as she wished and have a large bank account; but her bank was her home, under her own roof, and under the protection of her family; and there she left her money, as she says, in her pocketbook from time to time and year after year, with the key of the trunk in which it was kept placed in this little cup in the cupboard. There was no brother or no sister of Nellie whom she thought would take her money. The key was kept in the open cupboard; the trunk was at the head of the stairs; her little savings kept there with the other little belongings that she did not take with her when she went away. Decoration Day, 1896, she came home and went to the trunk and to her little pocketbook and took out \$15 of the money that she had saved from time to time to buy a dress and hat, leaving \$10 in bills, or one bill, I think she said (if I am wrong you will correct me), and perhaps 75 cents in change. In July she came back and put \$5 more into that pocketbook, — money that she could spare, or that she wanted to save, either one or the other. In October of the same year she put \$7 more into that pocketbook, leaving it there in the trunk, — her sister's trunk, in her own room, under her own roof where she was born. And Christmas Day, '96, when the family were assembled in that humble home, and she returning from her work in North Adams, spoke to her sister Rose and asked her to get the key and go up and bring down her pocketbook, and then in the presence of Rose, in the presence of the mother and of the other sister, she put \$5 more into that pocketbook and then went off with it. You will find, gentlemen, that she went up stairs with it and put it in the trunk. That is her testimony; that is the testimony of the mother, of Rose and of Minnie. And there it remained, as she sup-

posed. But after the preliminary hearing in this case she had occasion to go for her money, — I cannot say to you what her object was, but you may infer it, gentlemen, from the circumstances of the O'Neil family, — and she found it was gone, save \$5 and some change. The five-dollar bill that she tucked into one side of this pocketbook on Christmas was there, but the roll of bills on the other side of it was gone. I will not say John O'Neil took it. We know it was there. If these witnesses are to be believed, we know that when it was looked for it was gone; and if you are to draw inferences in this case on the side of the government, why not draw them in behalf of the accused?

You will remember what his mother said. You saw the opportunity he had, and it is for you to say, I repeat, whether it is more reasonable that he would do murder, a horrible murder, for \$15 than that he would under the excitement of drink and to please his fellows rob his sister; and, gentlemen, again take what he did after he came into possession and say by your verdict which is the most reasonable. Is he shrewd and cunning one moment and an absolute fool another? Ah, gentlemen, had he taken that \$15 from the dead body of Mrs. McCloud on that hillside in the night time, had he taken it from the dead body, the body of the woman whom he had murdered, would he in his senses have gone down to Shelburne Falls, flouted it about, exhibited it to this one and that one, and say to one man, "Why, I have got \$10, see it?" If he would murder the woman and place the packages about her unbroken, and her clothing down as it was, if he was intelligent enough to do that, would he within fifteen or twenty minutes or half an hour go down and exhibit the very evidences of his crime publicly and openly among his cronies and his enemies and everybody else? It is for you to say. On the other hand, had he taken that money out of his sister's pocketbook, he knew well that it was his sister, and that she would forgive him; and he hoped, as men do under those circumstances, to be able to replace it. But he got drunk with the gang with which he was unfortunately associated, and he didn't care after that. Gentlemen, it may be said to you that Mrs. O'Neil, that Rose O'Neil and Nellie and Minnie, are willing to live through life hereafter with perjury upon their souls, to save the son and brother from the gallows. But can you say it? Could you look into the face of that mother, bowed with grief here and at home, as she told you, could you look at that daughter Rose and these others, and believe in your own hearts, in your own souls, that that story was concocted for this purpose? I tell you, gentlemen, and I submit to you that in the homes of the poor of this Commonwealth, hard-working homes, where families are reared and children are, that the mother and the daughters and the family have regard for their

immortal souls as well as for the safety of others ; and it is a horrible and monstrous proposition to suppose for a moment or to intimate for a moment that those people would come here and deliberately and intentionally falsify and perjure themselves in this matter. Gentlemen, don't you take that view of the case without the most careful consideration that men can give to evidence. Be careful about it, and do not be led away by some suggestion of the learned, able and eloquent Attorney-General of Massachusetts.

Gentlemen, I know that the court is anxious, I know that we are all anxious, to conclude this trial, and therefore I must be brief. But I cannot close what I desire to say to you without referring to a piece of evidence in this case, introduced by the government, I think on the third or fourth day of this trial. You know what I mean, the testimony implying a confession from this defendant. I thought then, and I think now, that it was a mistake for the government to undertake to convict a man of murder in the first degree out of the mouths of State Prison convicts and professed criminals. Gentlemen, the testimony of David Davis is before you. His record is before you, so far at least as it is known to the public. And so, also, is the fact before you that, scheming and conspiring for his own benefit among others confined in the jail, he suggested putting up a job on this man indicted for his life, that his own little term and those of his fellows might be shortened, referring to the Pulitzer case and others. And Schenck, — Schenck, a third-term State Prison man, brought from the State Prison by the officers of the law with drawn revolvers in the public streets of Greenfield, he comes to tell you what this man had said. Can you take it? Can you believe it? Is it right? Is it safe? Would you feel comfortable after a verdict if you took it? And, gentlemen, Curtis, a specimen of humanity, — forgive me if I speak disrespectfully of any man, but you saw him there. He told his story down on the farm here in a bragging way or in some other way, and it got out among the officers, and they went for him and talked with him ; and he was told by his employer Hawkes, as he says, to stick to the story that he had told him and to tell it to the officers in the same way, and they got him to say to them, and on the strength of it you may well assume that they went with him to get the other convict witness, who was willing to come here and have a little liberty if only for a few days, and something to eat, even though it might cost a life.

Gentlemen, when Curtis took the stand, in spite of his depravity, in spite of the life he had lived, in spite of the crimes he had committed, in spite of the lies he told, when he stood here upon the stand and looked John O'Neil in the face, his conscience went back on him and he said to the district attorney or to the Attorney-Gen-

eral, "I lied when I said it; Jack O'Neil never told me any such thing." Ah, but he went a little further than was safe; for he said that O'Neil had told him that he had told his counsel, Messrs. Beer and Dowlin, the same thing. Did he do it? The Attorney-General of this Commonwealth has agreed, and it is a part of the record of this case, that Messrs. Beer and Dowlin would testify, if they took the stand, that it was false, — that no such statement was ever made to them by O'Neil. I cannot discuss that testimony longer.

And now, gentlemen, in conclusion, in behalf of the unfortunate prisoner at the bar, I beg, as I believe, that you will most carefully and conscientiously consider all the facts and all the circumstances in this case, and give to the defendant the benefit of any reasonable doubt that may have found lodgement in your minds, after you have listened to the able address that will follow and to the charge of the court. There is in this case no grave question of law as it occurs to me and to my associates, and we have very willingly left the statement of the law in every respect to the court, who will instruct you as to what it is and to the application that you shall make of it. But you will pardon me if, upon the presumption of the innocence of the defendant, I say that every person accused of crime is by law presumed to be innocent until the contrary is proven by competent and satisfactory evidence. This presumption is not a mere legal fiction, but is something that is real and tangible. It is an essential part of the law by which he is tried. It clings to him throughout his trial. It can be overcome, not by suspicions, not by suspicious circumstances nor by suspicious conduct on his part, but only by that kind and character of evidence which excludes every reasonable explanation of innocence. So the burden, gentlemen, is not upon the prisoner to prove his innocence, but it is upon the government to clearly and satisfactorily establish his guilt beyond all reasonable doubt. Probabilities of guilt, however strong, are of no consequence. The law does not permit a conviction upon what is not proven, but only suspected to exist. If all the evidence is equally capable of two or more explanations, one of which is consistent with innocence and the other consistent only with guilt, then the evidence does not rise to the test of moral certainty, and is therefore insufficient to support a just and legal conviction.

Gentlemen, I thank you sincerely for your attention.

Recess.

CLOSING ARGUMENT FOR THE COMMONWEALTH.

Mr. KNOWLTON (Attorney-General). May it please your Honors, Mr. Foreman, and you gentlemen of the jury: The sweetest thing in life is life itself. The joy of living, the consciousness of the right to

breathe God's air and to drink in through the senses the beauties of his world,—these are the foundation, the condition, the beginning, if not the end of happiness. Except in defence of honor, it is the last thing a man will give up. Though it have nothing to offer but imprisonment, or stripes, or slavery, or wretchedness, it is still the same precious breath of life which God breathed into the first father of us all, the supreme gift of the Almighty to man.

On that fateful day in January a woman was going up the mountain side to whom life meant much. She had been chastened, but her life was still full of joy and hope. She had the gifts of beauty, of health, of youth. She was surrounded by friends and loved ones, father and mother and sisters. But above all there had come to her a precious charge to keep, a child to gladden her mother-heart, to whom at that very moment she was bearing in her arms little tokens of love. It will never, I trust, be ours to conceive, much less to know, the horror of that moment when the cruel hand of the assassin clutched her throat. In the agony of her expiring consciousness, her last thought must have been of the little girl on the crest of the hill, watching for her return.

The crushing out of that mother's life was a crime that shocked humanity. No crime more atrocious could be conceived. Against such a crime, and in pursuit of the man who committed it, every honest citizen was at once enlisted. Everybody became a detective. Every man and woman, and even child, who might have some contribution of knowledge, brought it forth. The community demanded that the officers charged with the enforcement of the laws should spare no effort to hunt down the monster whose hand was stained with the blood of that innocent woman.

The detectives of the Commonwealth were summoned from Essex, and from Middlesex, and from Berkshire. The learned district attorney hastened to the scene of the crime, and, with the means provided by the laws of the Commonwealth, searched the conscience of everybody who might be supposed to know anything of the circumstances of the tragedy. This trial is the result of all that minute search. Everybody, little girls, old men, women and children, sober men and drunkards, good men and bad, everybody that had a word to say, even though he occupied a cell in the prison at Charlestown, has been brought here to testify.

Of one thing we may be sure. Everything that can ever be known about the crime is before you. And now the good men and women of this Commonwealth, whom I have the honor to represent, lay the facts so gathered before you and ask your judgment upon them. They demand of you to say if human investigations and human tribunals are adequate to the detection and the punishment of this wicked deed.

Let me say a preliminary word as to how the crime is proved. I think remarks were made in the early part of the case about circumstantial evidence. Mr. Foreman, did you ever hear of murder proved by direct evidence? Killing sometimes is, manslaughter may be, but malicious and wilful murder is almost never done in the presence of witnesses. If, therefore, any man among you is so prejudiced as to say, "I cannot convict a man of crime on circumstantial evidence," he says in effect that human tribunals are powerless to punish murder, for it is a crime committed in secret; and with scarce an exception it never was and never will be proved in any other way than by the logic of circumstances. The assassin who robbed and outraged and choked that woman on that lonely hillside, did his deed there because it was a secret place.

What is circumstantial evidence? It is the evidence of things seen. I have involuntarily quoted from one of the inspired writers. It is the evidence of things seen. Let me illustrate. I put my horse in the barn and shut the door. Then comes a fall of snow. After it stops I look out and there are tracks of a horse in the fresh snow leading from the door. Nobody has seen the horse go out; but I do not need to go into the barn to find out that a horse has gone away through that snow. I know it upon the evidence of things I see, things that cannot lie.

What is direct evidence, Mr. Foreman? Let me illustrate again. Two men stand by the gate and tell me they have been there all the time and, notwithstanding the tracks I see in the snow, they say, "No horse has gone by here." That is direct evidence; and because the circumstances cannot lie, I know that the direct witnesses have lied, because they are contradicted by the freshly made tracks.

That is the way this crime has been detected and brought to light. We commence with the first thing we find, — the body. We see all there is to be seen about that. Then we go outside, to the village and the surrounding country, and learn everything there is to be learned, get all the facts, whether of little or greater importance, and then put them together, and read the tale they tell.

Almost within the reach of the sound of my voice flows a beautiful river, all the more beautiful, perhaps, to my eyes, because they are unused to such a sight. It is a river the strength of whose torrent man cannot stay. No man, no company of men, no, not all the State of Massachusetts, can prevent it from flowing down through its valley to its home in the bosom of the ocean. The other day I went up on the hill near here, and saw a little rill flowing from a spring, a rill so small that I could have put out my hand and stayed its current. That rivulet is one of the million sources of the Connecticut. Any one of them, taken alone, can be diverted or stopped in its flow. But you

do not judge the power of the great river by the power of its contributing sources, taken each by itself. The little rills are weak and small, but together they make the mighty river. Try to dam that torrent, and you see how strong these little rills are when they come together and make the great stream.

But this damming of little rivulets is the way in which this case has been argued by the learned counsel for the defense. He takes a single fact, shows its weakness, and then says: "This proves nothing. It does not authorize you to find the defendant guilty. You must throw it aside." Then he takes up another fact and deals with it in the same way. Listen, gentlemen, rather to what the court will tell you by and by, — that you shall take the circumstances, not separately, but together, and see what they prove. They cannot be separated. God has ordained that the events of this life of ours shall be knit inextricably into each other. Every fact gets its importance from the way it is looked at in relation to other facts. There is no fact in the universe that stands alone.

There is no lack of evidence in the case, — not direct evidence of the murder, but direct evidence by witnesses of events which prove it. It is all brought home to you, just as anything is brought home to you in your life, in your own business, to consider and determine as you consider and determine the problems of your own lives. And when all, taken together, gives you moral certainty, you will not doubt, as cowards do, but act, as men do. By such reasoning, and upon such conclusions you plan, provide, build, progress, live.

Now, in considering this evidence there are certain rules that we apply to every-day life, the truth of which everybody that I am talking to will recognize. Human testimony is not infallible. No man can know all, or remember accurately. There is no man that is not human. And so, as we take up and sift testimony, we find that our experience of the affairs of the world grades it, according to the probability of truth on the one hand, and the liability to error on the other hand.

One of these rules relates to certainty in the matter of time. The things that happened to you yesterday you remember. At what hour or minute they happened, the chances are you do not remember. So it is with the events of last week. If there was a particular reason for having your attention directed to the time of any event, you may remember it. But ordinarily, when the question of time is not important, the human mind takes no note of it. Memory fixes the event but not the time it occurred. If we can once understand and appreciate this proposition, founded as it is on the experience of all men, it will help to reconcile some seeming discrepancies.

Suppose you twelve gentlemen go out from here when you are

through, and all take part together in some transaction, and next week you are called upon to tell about it. You were all there, you all took part in what occurred, and you all can tell it alike; but the probability is that, if you can tell the time of the occurrence at all, no two of you will agree about the hour, or even the day. Take another illustration. You went over to Shelburne Falls and viewed the scene of this tragedy. Perhaps you knew what time you got to the station, having seen the time table and having learned that the train was not late. But what man of you knows the time when you got to the scene of the murder, how long you were going up there, at what time you were at Ward's corner, at what time you were at the pool room, at what time you were at the extreme eastern portion of the village? Every step of that route is in your minds, everything you saw is in your minds, too; but unless some one of you had a special reason to look at the clock (and there were clocks in abundance everywhere you went), the chances are you haven't any idea of the time of any event, and, if you were called upon to fix it, might guess very far from the truth.

Three gentlemen sat together one evening discussing the very proposition I am now discussing, and one of them said, by way of illustration, "Let us guess what time it is." We knew we had our supper at such a time, we knew we had been sitting together since, and had smoked a cigar or two. What time was it? One said 9; another, quarter-past 9; the third, quarter before 10. It was in fact twenty minutes past 10 when the watches were consulted. Illustrations like that occur every day. It is just as impossible for people to tell time accurately as it is for any one of you at this moment to tell what time it is without looking at his watch.

Now, this is a consideration of great importance in considering the evidence which you have heard. Many of the witnesses have attempted, honestly, I have no doubt, to fix the time of things they saw. But that night nobody, with perhaps one or two exceptions, had his attention fixed upon time. Certain events were in their minds, like the arrival of the New York & New Haven train, like the arrival of the Fitchburg train, like the dispersion of the people from the post-office after the train was in, like the peg shop whistle; and some of the witnesses tried to tie up to those times. But even then it is doubtful whether they remember accurately or not,—that is, whether they are not believing that the time of the event they testify to is connected with some such event when in reality it is not.

Another rule relates to the remembrance of conversations. I can remember exactly what I did this noon, but I may not remember so well what I said this noon. This, however, is not of so much impor-

tance, for few talks are testified to, and those few are of a character that the listener would not be apt to forget.

Let us bear in mind these considerations in dealing with this evidence, for they clear up many discrepancies. All the difficulties, all the flaws that can be found, in what I shall submit, is the most absolute chain of circumstances that was ever presented in a murder case, grow out of the apparent discrepancy of honest witnesses as to time.

Now, the first thing that was done was to learn everything that could be known about that poor woman, not merely about the body lying there, but about the woman herself. My learned friend says that there isn't any evidence that she had any specific amount of money when she came up the hill. It is true nobody saw it; but the detective zeal, which is stimulated by the anxiety of the community to detect the criminal, has searched every shop and house in Shelburne Falls; and all the people that had anything to do with that woman's money have come here and told about it, and, although the testimony is negative in its character, the evidence is as exhaustive as it is conclusive.

Supposing your life, Mr. Foreman, or, perhaps, as you are in confinement, supposing my life, should be taken to-night. There isn't a moment of my time to-day that wouldn't be accounted for. There isn't a penny that I have spent to-day, nor a thing I have done, that wouldn't be disclosed. And so with this woman. Everybody that had a fact, however trifling, would bring it forth. If she gave a penny to a child, the child would come and tell of it. And, although we have no evidence as to how much money she had in her purse when she was stricken down, by anybody who then saw it in that purse, it is proved in this case with far more of certainty, I venture to say, than you can prove how much cash you began the trial with by balancing your cash account when you get out of here and go home.

What amount of money had she as she went up that hill? I shall have to weary you with reading the details, for I want you to appreciate how exact this thing is. Our learned friend, I fear, did not get it quite right. Not that he did not intend to, for a more conspicuously fair-minded argument I have not heard in a practice of many years. It is to be presumed that she started without much of any money, for she went to her father for money; and, although under the rules of evidence we are not allowed to put in what she said to him, we learn he handed her two checks, one of \$40 and the other of \$39.60, for money that he owed her.

She went down town at 4 or 5 o'clock that afternoon; this was Thursday; it isn't of any consequence exactly when. I can't under-

take to give you all of this 1,200 pages of testimony ; but she went down town at 4 or 5 o'clock in the afternoon, Thursday afternoon, with two checks, and spent a part of it. She went to Amsden's store and paid a bill. She had an account there. And, by the way, before I leave that part of the evidence, that is absolutely the only place she had anything charged on Friday, — Amsden's store, where she had an account, and if I am wrong I want to be corrected as I go along. My learned friend said she got things charged, and that it was evident, therefore, she had no money. She bought a little book at Amsden's store and had it charged, because that was the place she had things charged. On Thursday she went into Amsden's and had the check for \$39.60 changed, and got a ten and two fives and some other bills, — and got back, after paying the \$16.53 which she owed, \$23.07. This was Thursday afternoon. Then she went to Jenks's and paid a bill of \$1.50 ; then to the milliner's and paid a bill of \$4.18 ; she bought some ginger nuts and paid 10 cents, and went home with \$17.29.

Then the next afternoon, Friday, she came down again ; *when*, I will talk about by and by. She went into Schmidt's bakery and paid a little bill there of 10 cents, and bought graham wafers for 20 cents and some oranges for 6 cents. This exhausts the diligence and zeal of the community of Shelburne Falls in finding out where her money went to.

You may well believe that, with the exception that I am going to mention to you now, no human being had any money transactions with that woman excepting those I have stated. There was still a little more money than we find on the person of the alleged murderer, a little more than the \$15.50, which was all he ever showed to the world, as I shall show to you by and by, and we learn that \$1.20 had been paid to the O'Neil family on Friday noon, which brings the amount down, with the money in the purse, to just 17 cents more than \$15.50 found in the possession of this defendant after the murder.

What a fateful coincidence ! The woman was killed with \$15.67. And this man was found an hour afterwards with \$15.50 in his possession, now admitted to be stolen money. Of itself this coincidence does not convict the defendant. Of itself it is not sufficient proof ; but it is a mountain spring that will add to other mountain springs, and make the torrent of evidence which you will deal with when you go to your room.

Bright, cheerful, beautiful, — for O'Neil has told us that, — brave and unsuspecting, she leaves that little daughter behind and goes down the hill on Friday. She is seen passing, by that good old lady on Green Street, whose name I do not remember, at the time when

she was going out to close her shutters, previous to lighting her lamp ; and, as the sun set that night at half-past 4, if I am not mistaken, it was therefore about half-past 4 or 5 o'clock, and for that reason I put it so. She was going down to do these little errands and perhaps to see some of her friends. We do not know all. She goes to this store, goes to that store, buys this parcel and that parcel, and at last apparently gets ready to go back up the hill, at the time when Frank Tatreau saw her coming along by Odd Fellows hall, turning the corner of Clement Street, and going up the hill with bundles in her hand. None of these mysterious women that are seen by the witness for the defence on the Shelburne Falls side at 8 o'clock, not one of whom, by the way, that young lady could truthfully say she was sure was Mrs. McCloud, nor the other equally mysterious woman that was seen a square away, had any bundles. Frank Tatreau saw her "kind o' sideways." He walked behind her and saw her as she turned the corner. He knew her, and there she was starting for her home with her bundles in her hands.

Now, at this point, I am not going to putter with details and minutes of time. Frank Tatreau thinks that was about quarter to ten minutes of 7. He just thinks so. How does he think so? He is honest in it. Why, he left his home just after supper time, and he thinks he looked at the clock. But there is looking at the clock that does not look at it, the same as there is hearing that does not hear ; and he figures that he came back, and spent so much time here and there, and arrives at the conclusion it was about ten minutes to 7. Now, the only solid fact in all that is, that it was somewhere around 7. Another sure thing is that he saw her, and knew her. There is not a suggestion that he did not. She has gotten through down town. She has spent some more time than perhaps would have been necessary. Where she was all the time we don't know. Only the awakening at the last trump will ever tell us, for apparently no one that knows is willing to tell. Some more time was spent by her than apparently was necessary. But, fortunately, it is not material to this case. What we do know is that she was getting ready to go home about 7 o'clock.

When was she due there? The little boy and the little girl cannot tell, under the rules of law, — that is, by their oral testimony. We cannot tell when she was due up there by any direct evidence. But circumstances tell. The little boy was up there at half-past 6. At quarter to 7 he and the little daughter went out to look for her. Do you look for anybody you don't think is coming and don't expect to come? They had an appointment with her, so the little boy said. He had an appointment with her to take a music lesson, and at quarter to 7, or about that time, — because he is not accurate about

it, — he and the little girl went out looking for her. We look for those we have reason to believe will come.

She had not eaten her supper. It was too early for that. The little girl got mixed up on the stand about that. It is not strange. It was her first appearance here. I don't know whether she knows of her mother's taking off. I trust she does not yet. But she had said so many times and to so many people — to her sisters and to Mr. Greene — that her mother had not eaten supper, that it accords with everything else in the case to suppose she had not. She would not eat supper at half-past 4. If she were coming back at 7 she would probably eat her supper after she came back.

So that everything fits; and nothing fits this story of the woman walking on Bridge Street, the young lady couldn't say which way, at 8 o'clock. Mrs. McCloud was expected home at 7. That woman on Bridge Street had no bundles. The witness could not tell which way she was going, and couldn't swear it was Mrs. McCloud. But Hattie McCloud was due home at 7 to give a music lesson, to earn money to support her daughter with.

Up on the edge of the hill two children were looking for her about 7 o'clock. Down at the foot of the hill she was starting with bundles at about the same time. The two were to come together at the appointed time. Proof? What do you want for proof? How do you regulate your conduct of affairs? If there is anything beyond doubt in this case, it is that she turned Ward's corner in the neighborhood of 7 o'clock, en route for home, with the bundles for her little girl that she had purchased, to meet them as they waited for her on the top of the hill.

Then comes some evidence that is not quite so positive. I want to give the exact words, and if I do not use the exact words, my friend will correct me. I will not undertake to give all the testimony. There is not time. It would take days to read it. But certain pregnant things I desire to call to your attention. These men [the stenographers] have taken down everything that has been said, and I prefer to take the witnesses' words rather than my own. I told you about Tatreau. Then comes Schontag. He was driving up the street, he thinks a little after 7. He drove, as you remember, up Clement Street, up Hill Street, up there [pointing on the plan] and in behind this house, where his barn was; and as he was going along there, so he says, on Hill Street he saw a woman "whom I took to be Mrs. McCloud." So she was going up the hill. "Noticed her there, and that is who I thought it was as I passed her." There had been no murder then. But then, as he sat in his wagon, then, as he passed her, as he was driving, he thought it was Mrs. McCloud. He might be mistaken, it is true; but this fact comes right along after

Tatreau, and helps his testimony that it was about 7. Schontag tries to figure, and says he saw the clock, and then he went down town, went to the baker's shop, and came back and got into a road cart, and figures out it was a little after 7. He may be wrong about that. It is one of the things nobody can be sure of. But he was sure he saw a woman, and was sure he thought it was Hattie McCloud.

Then comes Mr. Meyer; and as to him my learned friend was inadvertently in error. He didn't see her at Ward's corner at all; it was here [indicating on map]. I will give you the exact place. It was upon the same street, as he was going down from his home. But he was not sure it was she. He took it that it was she. He struck a match to light his pipe, but would not be sure it was she.

All doubt however is dissolved by the venerable and accurate Mrs. Dewsnap. My friend talked about her wearing spectacles and being old, but she had seen Hattie McCloud go up and down that street by her home for fifteen years, and knew her as you know your child or your wife. There was no more possibility of her being mistaken than there would be of my failing to recognize my own wife should she enter that door. She says she knew her. She does not leave it to be inferred, but says, when asked who she was, "I could tell her any time by her form and walk, her being so used to go by." And when Mr. Hammond asked her, "Have you any doubt about it that the person was Mrs. McCloud?" She said, "No, sir; not at all;" and that she had bundles, by the way she carried her arms in front of her. She didn't see the bundles; her cape was over them. She puts the time a little early, but I apply the same test to her. She thought it was ten minutes of 7 when she went in the house; although she was dubious about the old clock; but the *fact* is burned in her mind so it will stay there until she dies. She knows what she is talking about. She is not an inconsiderate child, but a woman of respectability, veracity and judgment.

What is proved now? Let us take one step at a time. It is proved that about 7 o'clock Mrs. Hattie McCloud was going along up Clement Street, along Hill Street, by Mrs. Dewsnap's, on her way home, to meet those little children there that were looking for her at that very time; and all the talk by that Emma Koch and her chum, about women that they couldn't recognize, and about the woman they couldn't see, doesn't amount to chaff. It was in the edge of the village. They never saw this woman going by; it was not Mrs. McCloud, if there was anybody. The fact is, they are mistaken, not that they are trying to testify falsely, but it was 8 o'clock when they saw their woman, and Hattie Evelyn McCloud was then cold and stiff in death.

Now, is there any trouble about the proof, so far? Are you not absolutely satisfied that it was about 7 o'clock when she went up the hill?

Alone she proceeded up that desolate road. What a road for a woman to go upon! Only a strong-hearted, innocent woman would dare to do it, — just such a woman as Hattie McCloud. She felt no fear, for she thought not only that God was just but that men were good. We do not know how it happened. We shall never know, and for the purpose of this case we do not care, whether the assassin intercepted her, and she fled down that plainly defined open place in the woods, through the open place in the wall, until he caught her and choked her there; or whether he caught her here in the road and choked her, and took her down there. It is of no consequence. We may mercifully hope that she was made unconscious before she was outraged, but even with that we have little concern in this case.

What we know is, — and here is where an illustration of the value of circumstantial evidence comes in, — that those careful and accurate doctors went up there, and examined the body, and made the autopsy, and found absolute evidence of strangulation and rape; and my friends are so thoroughly satisfied with that circumstantial evidence, that the learned professor from Williams College who sat at the counsel's table went off home without uttering a word of contradiction. No man saw it done, but we know just how it was done. It was done with the four fingers of one hand on one side and the thumb on the other, compressing the wind-pipe, breaking the trachea, stopping her life; and the outrage followed. But whether it was before the vital spark had become extinct or not, we do not know.

There is another fixing of time which I do not remember that my friend alluded to. It is in consequence of one of those means that God has given to woman to defend herself with. She was soon choked, but before she was choked she made herself heard. She screamed for help. Everybody didn't hear it, but enough heard it. My friend undertook to explain it by the childish little call of the children on the hill. As though that would make women's blood freeze down in the village! We have all heard children call their mother, not in fear, but in cheerful expectation. Let me read the record of the boy's testimony, so as to see just how senseless is this explanation of the screams. "Q. You didn't see Alberta was at all alarmed? A. No, sir. Q. Just out waiting, thinking you would meet Mrs. McCloud pretty quick? A. Yes, sir. Q. Then how long before you moved a little way round the bend? A. I don't know. Q. Just calling, so that if she were coming up the hill she might hear you? A. Yes, sir. Q. Not at all frightened any of the time? A. No, sir. Q. Just trying pleasantly to call out, so Mrs. McCloud would know

you would meet her? A. Yes, sir." Was this the scream the witnesses heard?

Take the weakest first. Mrs. Sauer was stopping at Mrs. Amstein's about the time the New Haven train came in. You see she tries to fix the time in that way, the best she can. She heard a sound that was first a "holler" and then a groan. And she said it was a sound that frightened her. *Frightened her.* I sit on my piazza by the seashore, and hear calls upon the water in the evening of this party of merry-makers calling to that party, this person on the shore calling to that one upon the bay. Once I heard the scream of a person fallen overboard and drowning. Do you suppose I did not know the difference when I heard it? There is a *timbre* to a man's, to a woman's voice, that can speak right through the ears to the heart.

But I have only begun on this part of the case. The little colored girl heard a noise on the other side of the river, under the mountain, and thought it was wild animals. "Q. How did it affect you? A. I ran into the house to tell Mrs. Bigelow." That is the way she put it. Mrs. Bigelow says it was about 7 o'clock, or a little after. Mr. Merrill a little calmer in his way, a little more phlegmatic in his style of thinking and action, says: "My back was turned to the village. I heard a voice. Some one called. I turned around to see what it was, and as I was turning around I heard it again. Before I faced to the village I heard three more calls, and all was still." The hand had then closed over the wind-pipe. It quite likely is true that murder was at first not intended. It seldom is. Man is not quite so bad as that. It is when discovery is imminent that murder is put into a man's heart. And when she persisted in screaming, it became necessary to choke her, and that is why he choked her.

Well, they tried to make light of Merrill's story, my friends did. Merrill is a quiet man. He said it sounded as much like the word help as anything he could name. It came from the other side of the river, and when the next day he saw the spot where the body was found, he tells us that was just about the place where the sound came from, down there. I don't put much reliance upon that, but they tried to argue that the words sounded something alike. "Hello" and "help" are something alike. But the old man says quietly, when he is asked to describe it, "*I never heard such a voice before.*" Children have called their mother on Crittenden hill, but a woman was never murdered there before. That was a little after 7, about the time of the New Haven train.

Then there is Mrs. Jackman, the fourth one. Just see what she says: "Q. Describe that sound. A. It would be hard describing it, because it was such a *heart-rending* sound." Is a little boy calling to his music teacher to let her know that he is expecting her, or a

little girl calling to her mother just below her on the hill, — is that kind of a cry a heart-rending cry? Oh, no. It is murder that rends the heart. She said it was in the direction of the murder, "what I would call a scream." She heard one, and then heard another. She fixes it later. She thinks that the last train had gone by. She was at the second story. She lived upstairs, and she was pulling in clothes from the line. And it is in her mind that the train had gone, but it disagrees with the other three, who probably heard the same thing, and it may be she is not quite right there. It illustrates what I said a little while ago. She can never be so old or so feeble as to forget the scream or its character, but she took no note of time, and is only thinking, theorizing, reflecting, and, as she comes to think about it, she thinks the train had gone. It might have been the other train, which the rest of them tie to. I don't care exactly when it was. It was soon after 7. That, all of them put it. We may not put reliance upon any one person's idea of time, but if you all come to me and tell me, in answer to a question I put a while ago, a supposititious question, when we were up to the Crittenden house Monday afternoon in Shelburne Falls and one of you says 5.10, and another 5.15, and another five minutes of 5, I may believe that none of you are exact, but I know it was about 5 o'clock. That is safe.

There is one more fact which the frozen corpse discloses. It was a case of choking. A coward did that, — a bully that does not fight men, but only his inferiors. And, if I have any knowledge of human nature, it was not a sober man. I have yet to believe that such a crime is within the capability of any sober man that lives in Massachusetts. It had the evidence, the inherent evidence, of alcohol dominating the man that did it. And it was also a licentious man. A man that could be guilty of that crime under those circumstances was licentious to the last degree. And, lastly, in all probability, although there isn't any certainty about it, it was somebody that knew her, knew her route, knew the road, and was able to act with knowledge of everything.

Now, that is not proof, it is only inference. But if you read this story in the newspapers you said, undoubtedly, "Some licentious, drunken ruffian and bully did that thing, in liquor." When he is found, you can identify him in that way. And that is not the only way, either. Every one spends his small change first, and leaves his large bills. She had spent down to \$15.67 of her money; and if you can find that man soon enough, he will have a ten-dollar bill and a five dollar bill and 67 cents in silver.

Whoever did it was not long. It did not take long to choke the tender throat till life ceased. It did not take long to violate the person of the dead or dying woman. It did not take long to snatch

the money from the purse by her side. It took but a second to draw the clothes down. And then, — I speak in terms of solemnity when I say it, — then came hell. Every bush was a ghost, every sound was an avenging fury. Ten thousand devils chased that man as he came to his senses and fled from the spot. He dare not go down that road again, for he knew not who had seen him go up. He dare not go up to where those children were waiting. He knew the locality, and he fled like a deer through the bushes to another road that was safer from suspicion.

Another thing about that man when you find him. He will be asked to account for his time from a quarter or ten minutes of 7 until after, some little time after, the New Haven train gets in, and until the other train gets in. When the assassin is found, not only will he have \$15.50 in his pocket, but he will be asked to explain where he was from quarter of 7 until twenty-five or thirty minutes after; and when you find a man previously penniless who has that money in his pocket, that ten-dollar bill and that five-dollar bill, and a man who cannot produce anybody, excepting perhaps a sister, to say where he was from quarter of 7 till half past; and when you analyze the character of that man, and find that he is licentious, a drunkard and a bully, — as witness that tramp incident on Saturday afternoon, — you have got pretty near the murderer, — you have got pretty near the murderer, gentlemen. And when you also learn that that very man the day before said that he must gratify his passion; and the night before when that same woman went up that hill, said, "I am going up with her some night;" you won't bother your head about two strange men seen an hour after the murder by a girl away down a square off.

Talk about proof! What is proof? It is coming to a conclusion of a moral certainty, so that you will go home and know to a moral certainty that the prisoner that sat before you is the guilty man. You do not take hold of this thing like a scientist, a critic, an analyzer, a disputator. You open your mind to receive the impression, and when it is driven home, it is there to stay.

Now, so far have I gone wrong one hair or one step? If so, God stay my hand and close my mouth, for I realize that, responsible as is the duty imposed upon me of assisting in the protection of the women of Massachusetts from such things as that, I am no less charged with the duty to the defendant of seeing to it that no tittle of evidence is misstated.

End of chapter first.

Miss Anna Morse left her home to go to church, as she thinks about half-past 7 in the evening, and she saw a strange sight. I will not undertake to mutilate that evidence. I want you to have it

literally reproduced. My learned friend has well said that it is evidence of grave importance; and, if I know anything, from a discussion of them for thirty years, about the springs of human action, the man who followed her down that hill was the red-handed murderer himself, whoever he was. And when you hear her story again, see if you do not say I am right about it. She came out of her house right there at the Ashfield road, and saw a man coming rapidly down that hill. That is her house, right above there [indicating on map]. She saw a man coming rapidly down that hill. Nobody lives up there.

"I was half a rod ahead of him."

"Did he keep on his rapid gait, or slow down?" "He walked slower."

"Did he remain the same distance behind you, or go slower or faster?" "About that distance, I should say, all the way down street." "Did you see him after you got started?" "Yes, sir."

"How many times did you see him?" "I think I looked around before I reached the railroad crossing about three times."

"When you looked around, did you see him?" "Not to get a good view. He turned his head every time I looked around."

"So you didn't see his face?" "No, sir."

"How far behind you was he when you looked around?" "Just about half a rod, I should say."

"Did you change your gait?" "I walked slower, hoping he would pass by me, — I wouldn't dare to, — and then hurried along a little faster when I saw he would not."

"Did he keep behind you that same distance?" "He kept behind me the same distance, as nearly as I can tell."

"When you first met him, was he going faster or slower than when you got in ahead?" "Faster."

"Very much?" "No, sir; quite a rapid walk."

"Where did you go to?" "I went to the Methodist church."

"That was near Amstein's store?" "Yes, sir."

"Was this man behind you when you got there?" "No, sir."

"What became of him?" "Where Clement Street joins the other street, he passed on east to go over the bridge, and I went on towards the church."

"You mean he started across the road?" "Yes, sir; I didn't see whether he reached the bridge or not, but he started across the street, — *diagonally across the street to the bridge.*"

That man, gentlemen, is the murderer. No man would be coming down that road at that time of night, not daring to be seen by that honest woman in the face, hurrying until he got in sight of civilization, and then slouching behind and turning his face when she did.

She had heard of no murder. It didn't come into her head to think who it was. She realized on the witness stand that she was testifying under the solemnity of an oath, and that an incautious word might throw that man's life away if hastily spoken, and so she answered briefly that she did not know who it was. He had on a long coat, reaching to his ankles, the collar turned up. His hat she did not notice, and yet his height and shape were, as she now thinks, from what she has since seen of him, those of John O'Neil.

Who was that man? That was somewhere along half-past 7 to twenty minutes to 8, or perhaps a little earlier. We will not bother about the exact time. Next comes another witness, who ties right to Anna Morse's story. Lena Schontag came tripping down the street, and she saw a man crossing Clement Street, who cut across diagonally and crossed over to the bridge, alone, just as did the man who followed Anna Morse. And she thinks it was somewhere near 8 o'clock. She started from home when the train was due, and went to the office, and came down after she got her mail. *And that man with the long coat, and collar turned up, that crossed diagonally from Clement Street to the bridge, was John O'Neil, for she knew him.* Now, what man is there in Shelburne Falls who has the height and shape of John O'Neil, who wore a long coat with the collar turned up, and who was out that night? Six months have been given to search every corner of the universe, and no man that even approaches that description has been heard of.

But there is more of it. At twenty minutes of 8,—our friends put in the evidence, and not we,—at twenty minutes of 8 the little Koch girl, and another girl with her, whose name I do not remember,—O'Brien, I think,—saw John O'Neil coming down depot hill dressed in the same old long coat reaching to the knees, with the collar turned up, and he went by *them* so near them that they knew him. And this was just the time when Miss Morse says she saw him, too.

Where did he go to? Where did John O'Neil go to? Every time previous to this, every time when anything of his whereabouts has been told, he vibrated between his house and that "Hell's kitchen," as the newspapers call it. When he got through at the house, he was down there. To-night, with \$15.50 in his pocket, as it afterwards turns out, he stopped on that lonely bridge and looked over into the tide. We may well believe that something of the John O'Neil that his mother bore twenty-six years ago, before rum and licentiousness had ruined him, looked over that bridge for a few moments. There are times when to the worst of men comes the other side of the shield, and they think; and he stood leaning over that bridge, a thing that he had never done, so far as any testimony appears,

before in the world. What were his thoughts? Let me tell you. "What have I done to gratify a passion? Stimulated by alcohol, I have committed murder."

While I am on this part of the case, I will follow it up. The evidence is that from that time for half an hour and until he bought his first pint of rum he kept by himself. Others saw him. Mr. Kendrick started away twenty minutes past 7, passed down the street, went up Green Street to leave a can of milk, walked along the railroad bridge and up Clement Street to leave another can of milk, then down again to that bridge. And there is John O'Neil with the long coat, the ulster, leaning over the bridge, alone. Kendrick spoke to him, and he started up and went across, but even then he could not quite yet go to his old haunts. He stopped on the other side of the bridge, and Mrs. Burleigh Webster saw him there also, leaning against the bridge, not quite ready to go in. When was this? Kendrick makes some little approach to time, although even he may be wrong, — for I trust nobody's accuracy on this matter. He says he went right straight across, left the milk there, went into the post-office, buttoned up his coat and looked at the clock, and it was twelve minutes of 8, so that his time is pretty well accounted for, and he comes the nearest to being accurate of anybody.

Now, that crime was committed, as we have seen, Mr. Foreman and gentlemen, that crime was committed some time about 7 o'clock, or a few minutes after. Everything fits that time. With some little allowance for the discrepancies of this person and that person, they all centre around that time. A few minutes after 7 Schontag saw her; a few minutes before 7 Tatreau saw her, some of them saw her a little before. Mrs. Dewsnap saw her about that time. All saw her going up the hill, a little after 7. They all heard the screams about 7 o'clock. And somewhere about half-past 7 a man is hurrying down that street and dodging the one ahead of him until he gets to the bridge and stops, and when he stops, he is John O'Neil.

Now we have the right to turn to the prisoner and say, "WHERE WERE YOU, JOHN O'NEIL, FROM A QUARTER OF 7 TILL YOU STOOD ON THAT BRIDGE ALONE?"

With the exception of Rose O'Neil and possibly Mr. Joe Atkins, both of whom I will talk about in a moment, no human being saw him from a quarter of 7 until after the Fitchburg train had got in. NO LIVING BEING SAW HIM.

Now, I am going to make that as plain as anything can be. Isn't it remarkable? A town full of people, and attention called to the fact within twenty-four hours afterwards. A fine-tooth comb could not have dragged the town any more closely. Every one knows about every movement of his before and after. They are testified to by

scores of people, and yet from quarter of 7 until after the Fitchburg train got in only two people attempt, even, to say where he is.

Rose O'Neil says she saw him at five minutes of 7. Of course there, again, is the uncertainty in the matter of time. My learned friend appreciated the importance of her testimony, for he spent more than fifteen minutes discussing her character. But there are other witnesses to that sight of John O'Neil. When Rose O'Neil saw him he was standing with two or three other full-grown men. *Who are they? Where are they? He knows who they are, if he was there. They know who they are, if they were there.* He knows that they could come forward and save his life. They know that they could come forward and save his life. And so I meet Rose O'Neil's testimony, actuated, as it must be, and I desire to speak with all tenderness, — it is a hard ordeal for a sister, — I meet her testimony as to her judgment of time by challenging her to produce the men she saw standing with him. Find those men and bring them here, and I may believe Rose O'Neil was accurate as to time against everybody else in the world.

Who was the other man who claimed to see him at this fateful time? Joe Atkins. Joe Atkins, — who said to three of these officers that he would tell a lie to save his friend O'Neil, — one of the frequenters of that resort in Shelburne Falls. He said he saw him come into the pool room at 7 o'clock. But there are other witnesses who were there. They are not very high-toned men; it is not a resort for Methodist ministers or Sunday-school superintendents. But there is one thing true of them, — every man is a friend of John O'Neil, — every man of them. And the men that were in that pool room from twenty minutes past 6 all the evening, and never went out, and have said so on the stand, are Christian Fritz, William Wood, William H. Shaw, Edward Haller, Charles or Dubsey Woodward, Adolph Haller and William P. Morrissey. Not one of them saw him there at 7 o'clock or until long afterwards. And they are not swift witnesses for the Commonwealth. If by any process they could get that man into that pool room, any one of them would have done it. They were his chums and companions.

Here appears the value of an inquest, that some people find so much fault with. The learned and efficient district attorney, whose zeal and ability in this case I cannot praise too highly, went to Shelburne Falls, even while domestic afflictions were threatening him, and sent for those men before they had a chance to know what kind of a lie to tell, and got the truth; and they have had to tell the truth ever since, — not because they want to, but because they can't help themselves. I think you will believe that Joe Atkins was telling the truth for once in his life when he told the officers that he would tell

any kind of a lie to clear Jack O'Neil. Why, he couldn't tell — you heard him, perhaps that picture comes back to your mind — he couldn't name a single man that was in there, couldn't name a single man that went out, couldn't name a single thing that was done, but he persisted in his story that O'Neil came in there about 7 o'clock; and he is the one witness upon which it is relied to say where else O'Neil was when he was in fact up in the woods choking that girl.

Now, let us refer a little to the evidence for the defence, so as to be entirely fair. I can do that before we take the recess, I think, and end it. You heard the statement of my learned friend in his opening, that he was going to cover this man's footsteps accurately, completely and absolutely all that evening. What have you got? The O'Brien and Koch girls, as I have already said, saw him there at twenty minutes of 8 coming down that street. And, by the way, where had he been? Where had he been? There were no pool rooms in the direction from which he came. He didn't go home again. He didn't go to the depot. Where had he been when he was coming down that street at twenty minutes of 8? It is one of those unanswered questions that is a circumstance. Unanswered questions are circumstances. If you lose your watch, Mr. Foreman, and to-morrow it is in my pocket, the fact that it is found in my pocket is not evidence against me. The pregnant fact to convict me is that it is found in my pocket, and that I cannot or will not answer the question, "How did it come there?" That is the circumstance which proves my guilt.

But I was going to go through these *alibi* witnesses and dispose of them once for all. I have told you about O'Brien and Koch. Twenty minutes of 8 they saw him coming down the depot hill. There is one thing to be said of them all, every one of them, excepting Rose O'Neil and Joe Atkins, — they all saw O'Neil after the Fitchburg train had gone through, and most of them necessarily quite a while after.

Mrs. Burleigh Webster. It would be ungallant, unnecessary and undecorous, in the solemnity of this occasion, for me to discuss too minutely Mrs. Burleigh Webster's affairs. But I am obliged to say that she came to town unexpectedly. I am obliged to say that she was embarrassed at finding her nieces at the depot. I am obliged to say that she had to confess to you that she told a white lie to her nieces to shake them off. I am obliged to say to you that she found unfortunately that they were going the same way she was going, and that she had to give them what she called the "shake," and to see them down the hill and over the bridge before she ventured to start herself. The train was on time that night, but a woman takes some time getting out. You and I, Mr. Foreman, will get out

on the platform, and risk our legs by jumping, but a woman, especially a large woman like Mrs. Webster, will take time. Undoubtedly she walked slowly, got out deliberately, hunted up an expressman, and then met her nieces and talked with them; and heaven only knows how long women will talk when they get together. They at least don't know. No married man on this jury can gainsay me that. It is the only admirable thing that a woman lacks,—conception of time. So she talked over the events of Shelburne Falls, all the time wondering, "How can I get rid of these girls?" and she saw them walk down the railroad track,—they were in a hurry, they got to the corner, and she said, "I must go to my sister's; go on; I will see you later." They started down the street, she came back to the corner, watched until they got down out of sight and then went over the bridge to meet her appointment, and there was John O'Neil, just as Kendrick had left him. That is the exact place Kendrick left him, and pretty near the time, making allowance for the time a woman would ordinarily take to do such unusual and interesting things as getting rid of people supposed to be glad to see her. All this is out of her own mouth. This is one of the witnesses introduced to show where John O'Neil was, and she doesn't pretend to see him until he had come down the road at twenty minutes to 8, or thereabouts.

Delia Quinn, a nice looking girl. You saw her on the stand. She said she had an appointment with Rose at half-past 7. That is not very bad, because it does not interfere with my position at all, not in the slightest. She got there at half-past 7, at the Shelburne Falls House, and as she came along she saw O'Neil by the entrance to Haller's pool room, almost across from the entrance to the hotel, at half-past 7. That was long after the train got in, as I have said. I don't know that I need to comment on the fact that Delia had to say she had told the officers she didn't see him; because if she saw him, it was at a time that does not embarrass you at all.

James J. Kennedy and Thomas O'Neil, called by the defendant. What did they do? They came down, loafed around the street, went up to the station. When the train got in, Kennedy went back and went down to the post-office. When the bell rang, they got through. I believe the first bell is for boxes. Then sauntered down and stopped a few minutes in front of the barber's shop, and then they got on the bridge at twenty-five minutes to 8, and there they saw O'Neil and Kendrick, just when we say they were together and where.

Then there is John Ryan, who says he knew he met him at quarter to 8 here, as he went down home. It was between twenty minutes and quarter to 8. After the mail was distributed, he came down round the corner and saw O'Neil on the bridge.

If there is any other witness who has been called, and whom I have not named, I want to know it now. And that is why I have said to you, — and it is a tremendous fact in this case, — that is why I have said to you that out of all Shelburne Falls no living being has been found that will say he saw John O'Neil from quarter to 7 until half-past 7 or later, excepting Joe Atkins, whom everyone of his cronies contradicts, and Rose O'Neil, his sister.

Now, if he was in that town between those times, where was he, and whom was he with? The first thing he told the officer was, "I can account for all my time." He is a well-known man, somewhat under the influence of liquor, conspicuous anywhere, down on a crowded street, and has not been able to bring out of all Shelburne Falls anybody to say where he was from quarter to 7 to half-past or later, excepting Joe Atkins and his sister Rose.

Here a short recess was taken.

May it please your Honors, Mr. Foreman and gentlemen: I take this opportunity to thank you for the patience with which you have listened to what I have had to say, and to apologize for trenching upon the usual time of adjournment for concluding. It was the suggestion not only of the learned court, but of counsel, that perhaps you would be willing to have the arguments in this case concluded to-day, so that the sooner you might go back to those from whom you have been obliged to be separated so long. I will promise not to take more time than is absolutely due the occasion, and to discharge you from the consideration of anything I may have to say as soon as may be.

I had just come to what I am obliged to say, in my opinion, is a very vital part of this case. A man is charged to-day, Mr. Foreman, with having committed murder between quarter of 7 and half-past 7 night before last. He is a well-known man. He has no secret business; he is around town, he sees his friends, he knows where he is, he is either at home or down among his companions. If he was at the scene of the murder, he can find nobody to say where he was. If he was not connected with the murder, it is a cruel fate, indeed, that he cannot follow every footstep of his movements at the fatal time.

That is the unfortunate and distressful predicament into which we are obliged to drive this defendant to-night. We have demonstrated, and you are satisfied, if human evidence ever satisfies a reasonable man of anything, that Harriet Evelyn McCloud was leaving for her home shortly before 7, and not far from the time or a little after the time when Jack O'Neil came out from his supper and left his

home; that she was murdered shortly after 7, and that it would take the murderer something like ten or fifteen minutes to get back among his companions, that his absence might not be noticed. This makes it absolutely vital to John O'Neil to show where he was. His learned counsel appreciates the importance of that fact to O'Neil. He appreciated the importance of that fact himself. The first thing he said when he was arrested, after a remark which I will allude to by and by, was, "I can account for my time." And he said to the men who charged him with knowledge of the crime the next day, — a pretty serious charge from his boon companions, — "Jack, can you account for where you was last night?" "You bet I can." And the opening of his learned counsel admitted that it was necessary, in view of the other circumstances, that his time should be accounted for. It cuts more than one way to attempt an *alibi* and utterly fail. It goes to prove the man where we place him, if the other circumstances corroborate it. A man may stand silent and say, "I offer no proof," and the government must rest where it is; and so, early in the case, as soon as he was arrested, and after these officers (whom I am glad to hear my honorable friend did not allude to in the terms of opprobrium that are sometimes applied to these men who are employed by you and me to look after life and liberty) cautioned him that he was talking to officers, and to be careful what he was saying, he said to them, "I can account for my time." To quote his exact words, — "Where were you the first part of the evening?" "I came over the bridge the first part of the evening with a fellow named Wood, and we met a girl named Tousseul, and he went off with her and I went over to the pool room," and he said he was on the bridge about ten minutes past seven, about the time the mail train gets in, with one of the selectmen, Kendrick.

That is all wrong. Nobody verifies that. Not a witness corroborates that story, — not one. We have had a recess of fifteen minutes, and I asserted, upon the responsibility of my office, well knowing the wrong I was doing to that man if I stated anything that was not true, — I asserted before the recess that out of all Shelburne Falls the man had not been found, nor the woman, nor the child, that could say they set eyes upon the form of John O'Neil from quarter of 7 until half-past 7, excepting Joe Atkins and Rose O'Neil; and if I had stated untruly, my friends would have courteously called my attention to it. They have failed to do so. I have talked about every witness that has been called. Only one of them pretends to have seen him before 7, and that is Johnnie Ryan, who met him as he said, when he was coming down Green Street, coming from supper, evidently about quarter of 7, and he was the last man that saw him until Hattie McCloud was choked. No, I am wrong about that.

This miserable man, who could not even tell a straight story to the officers, and admitted that he would lie to save the life of his friend O'Neil, undertakes to face eight of his "Hell's kitchen" comrades, and say O'Neil was there at 7 o'clock, when they were all there, and O'Neil was not. And O'Neil himself wouldn't say that, — he didn't say that himself, when he was talking to the officers.

I undertake to say that this is a tremendous fact in this case. He knows where he was. His memory has been more acute than yours ever was. He has studied every foot, every movement of that evening. If human eye saw him that night, other than the eye of Hattie McCloud, he knows it, and would have the witness here. He has brought not one, and the *alibi* has come down to an unsupported statement of Rose O'Neil, his sister, who may be wrong about the time, and who calls up the ghosts of three male, full-grown live witnesses, who do not come here to corroborate her story.

An *alibi*, attempted and failed in, is a most pregnant circumstance, — a most pregnant circumstance.

We will now see what he was doing that night. We have already followed that long ulster running down that road, pursuing Miss Morse down here, crossing the road, as seen by Lena Schontag, leaning over the bridge, when Kendrick came along, and while he was walking over with Kendrick met by Thomas O'Neil and George Atkins, if I have gotten it right. We have gotten that part of the story.

What then? For the first time in his life, perhaps, John O'Neil was not seeking boon companions. The river fascinated him. The deep, still-running waters awakened something of that smothered conscience that cowardice and crime had stilled so long. Oh, the punishment that comes to evil deeds! It is not in the hereafter, it is right here that we are punished; and a whole future of fortune will not undo those awful moments on the bridge.

He was not seeking his boon companions. He was skulking around, here and there. And the first time he comes to light, when at last he braces up, he goes into Philip Woodward's bar room, Leon tending bar, and hands over his fifty cents, and says, "Give me a pint." He doesn't drink it there, — Jim Wood is right there in the room and is going out, and that is about quarter to twenty-five minutes past 8. He had hid again after that time on the bridge. Nobody saw him during that time, but he finally turns up. He has got to do something. A man has got to run away from himself after he has committed crime. His own guilty conscience pursues him more sharply than police officers do. There is but one refuge, and that is the "*pint*." So he goes in with the fifty cents. It is twenty minutes past 8. He has been drunk all day long, as they say, and I shall not

argue about it,—his appetite for liquor all inflamed ; and from quarter past 6 to twenty minutes past 8, he neither joins his companions nor drinks a drop, until he sneaks in there alone, not with his companions, but *alone*, lays down his change, and says, "Give me a pint," walks out with Wood, and goes across the bridge with him. Then Wood drops him, because Miss Tousseul has come along, as all the undisputed evidence shows (only it was not, as O'Neil said to the officers, half-past 6 ; it was half-past 8, or thereabouts) ; and Wood went off with Miss Tousseul up to the hotel. And O'Neil, with his pint and a drink of beer, given him at the Woodward House as the result of a game played when he went in, begins to feel the old John O'Neil come back again, and goes, as straight as a magnet to the pole, to Haller's bar room.

Even then he does not quite go in, but puts his head in, and the old cronies are called out, — Morrissey, Woodward and the like. I have forgotten the details of who they were. And they drank their pint, and he says, "This is Jim Wood's pint. He met his girl, and gave it to me." He hadn't got quite ready to tell the truth, even to his boon companions. But they drank the pint, and the courage of rum came back to him.

By the way there is something singular about this whole money business, — and I speak of it out of order before I forget it. Never, never, from the beginning to the end, does he exhibit a bill in the presence of one of the ordinary townspeople, the saloon keepers or the traders. Always one of his chums shows the bill. He never exhibited his large bills to anybody, excepting when later he displayed a five-dollar bill in his own home, where it is now said he stole it. He concealed it on the street, but showed it at home, within four feet from the place where it is said he stole it from his own sister. About the first of the evening he wanted to pay Haller a dollar he owed him. It was only 75 cents, but never mind, "Here is a dollar," he said, hauling out a bill. He didn't know how much money he had got. *He got it in the dark of the woods.* Haller looked at it and said, "Why, this is a ten-dollar bill." "Give it back to me ; it is a mistake." He did not have a dollar. There was a ten, a five, and never any exhibition of anything else, as we will see before we get through. When he first showed it he said "That is a one-dollar bill I have been saving since I worked on the railroad." And when he found out it was a ten, he said, "It is a ten-dollar bill given me by mistake in change at Woodward's bar."

With that lie, falsehood began, and the truth ended forever with him. There never was one honest thing said from that time since. He said, "Go and get another pint." He didn't go himself. He didn't show up in the village with a five-dollar bill. He knew that

there were lips that were dead, and yet would speak, when the sun shone again. It was not money taken from a trunk, that the world would know nothing of, but taken from the dead body of that woman. And Morrissey brought back four dollars and a half and the pint, and he gave him 50 cents for doing the errand. He was flush that evening! He had "struck it rich," as he said. He had the "tin," and they bought another pint; and he at once went in and wanted to play billiards. He could put up the "stuff!"

By and by James Wood got through with his meeting with the young lady, and, instead of going home, he met them. They had pretty nearly gone through with the five-dollar bill, and he said to Wood, "Go and get me a pint." And Wood said, "I won't do it." "Oh, go along and get me a pint." "I won't do it; I am going home." "Oh, go long and get me a pint. Here is the stuff." And what did Wood say? It was pretty near being the first accusation that was made against O'Neil. "WHERE IN HELL DID YOU GET THAT?" He knew he had no right to so much money as that. But he took it and he came back again, and they all got pretty drunk, and they went up to the depot.

That crowd were all friends of O'Neil. My friends say that I have accredited them by putting them on the stand. Do you suppose I can put a crown on the head of Woodward or a palm in the hand of Morrissey by putting them on the stand? They were his cronies. They were the frequenters of that "Hell's kitchen." But even that crowd hadn't gotten soggy with liquor. Instinctively they went toward the station. They had an impression that it was a good deal better for O'Neil to get out of town. It wasn't anybody else that was going out of town. How much they knew, we shall never know. How much they suspected, we have some idea; but they were all pretty drunk by that time, and so O'Neil went to sleep, and when the station master drove him out, there came out the first suspicious circumstance that honest, respectable people had that O'Neil was connected with the crime. One of these men pulled the ten-dollar bill out of his pocket and said, "Here, this man has money enough to go to Boston." They didn't know it was stolen then.

The next morning the performance was repeated, and I have got something like an accurate statement of what he did. You know he never showed anything but the ten-dollar bill, and the five-dollar bill, and the fifty-cent piece. First he showed the ten-dollar bill, then he took it back, and spent the five-dollar bill. At the end of that evening he had a two-dollar bill left out of the five. Next morning he began by getting that changed at the blacksmith's shop, and in the course of the forenoon he got Morrissey to change the ten and

they spent the money the same way. They bought the first pint and gave Haller a dollar. Bought the second for fifty cents and gave Morrissey fifty cents. The next morning he came up again and had four pints in the morning, \$2 more, and made a loan to Morrissey, and again he was flush that day, and went over and had some clams, and it all left him \$5 and some change.

Observe, again, that nothing but silver was ever shown by him. When a bill was to be changed, it was somebody else that did it.

Now, let us round up, as they say in driving logs down in Maine where I was born. We have found, so far as human testimony can give us light, — we are sure of nothing in this world, — but we have found out, so far as it ever can be found out in this world, and to a moral certainty, that Hattie McCloud went up that hill in the neighborhood of 7 with a ten, a five, and silver to the amount of 67 cents in her pocket.

She was stricken in death very soon after 7 o'clock, and a man so closely resembling O'Neil as to make it impossible that there should be another so like him (and no other has been produced) was seen hurrying away by a back road from the scene of the murder; not at first identified by Miss Morse, but as he crossed diagonally over from Ward's corner to the bridge, plainly identified and recognized by Lena Schontag; a man whom, as I have said, all this world cannot find a pair of eyes that have seen from quarter of 7 to half past.

But eyes that are countless have noted the fact that when he finally nerved himself for his evening's debauch, by his purchase of his first pint, he had a ten, and a five, and 50 cents, and no more. He spent the 50 cents in Woodward's. Then he came down and showed the ten, thinking it was a one, and didn't spend it. Then he showed the five, and spent it. Then he had \$2 left of that, and next morning he had that bill broken, and spent it. Then he broke his ten, and got five in change; then at night he gave the doctor the five, just as you or I or anybody else would.

And this man was in liquor, he was licentious, he had said the day before he would go up the hill with her. He lusted for her; and, most fateful fact of all, for weeks before up to that very night, he had been utterly penniless.

Now what do you think of that as coming somewhere near to proof? Mrs. McCloud goes to her death with \$15.67. John O'Neil goes to his debauch with \$15.50. Terrible, is it not? And yet we cannot help this conclusion that is forced upon us. We do not want to convict this man, or any man, but we are driven to it if we do it.

Ah! but they say, "We will account for the money." This man was arrested on Tuesday morning. Now, just hear this story, for it

is a plain one. This man was arrested on Tuesday morning, January 12, if that is the right date, at 5 o'clock. Why? Not because he had not shown an *alibi*. That thing had not been thought of. Not because he had been seen coming down the road. That, then, had not been thought of. He was arrested because, being drunken and dissolute and in want of money, he had, within two hours of that murder, exhibited a ten-dollar bill, and the next night had paid Dr. Upton a five. A drunkard suddenly grown rich does not come by his money honestly. She had lost a ten and a five, and the authorities said, "Put that man under arrest" (and they would have been false to their duty if they had not), "and we will take our time, and find out about where he was."

Everybody knew that. He knew it. His mother knew it. His sisters knew it. Nellie, who came down immediately, knew it. They came to see him in the jail. They had interviews with him. And, if there is any truth in this trunk and wallet story, if there is any truth in it, and if he had anything to do with it, with that tremendous charge over his head, couldn't he have found it in his heart to have told his family the truth, and had it come out?

Here you are, arrested because you have got a ten and a five that you cannot account for, knowing that you got it from the house, and that mother will weep upon your neck and forgive you if by that means she can save you from that cruel charge. But the mother and the sisters come to court before Judge Lyman, and give their testimony, and exclude it from the possibility of being so. They come before the district court and tell a story which is exclusive of any such thing being so. February goes by, March, April, May, June, July 19, 20, 21, down to the 24th of July; and my good friend — and I say it not by way of criticism, but by way of commendation of his ingenuity — opens this case, and even then he fails to tell you where that money comes from; and you went to your rest Saturday night without the slightest indication of how it was going to be accounted for. And so all day Monday.

But just as we got through Monday night, the last witness intimated that when she went there in February she didn't find \$22 that was there. I don't know whether that is so or not. I am not called upon to discuss it. I don't know how much we could have found out if they had seasonably exposed that story. If a man has a truth he need not keep it back. If O'Neil could wash his hands of this charge by telling that truth, couldn't he have done it long and long ago, and not kept it back? For he knew it, whether anybody else did or not. To-day, even, nobody says he stole the money from his sister, and there is an answer to it that is as fatal as truth itself.

— I have already alluded to the fact that he never displayed \$22. He

never showed anything but his ten and his five. Just think of a man going and snatching money from a pocket-book, and not taking it *all*. He doesn't know what he has got. He didn't pick out \$15. He didn't know whether it was a one or a ten dollar bill. He takes all but five, and leaves five there and the change. But I will pass from that, for there is something worse about the story than that, which is absolutely fatal to it. In view of it, I am led to say again, as I have said a great many times, that I believe there is a Providence that enables man to detect falsehood, to discover crime and bring it to punishment.

The only question I asked Nellie O'Neil when she was first on the stand was if any silver was taken from that pocket-book, and she said "No, \$22 in bills." Now, what was O'Neil's condition that morning? He had drunk with Leland. My friend did not see what the significance of that testimony was. He will now, I think. He had a drink with Leland, and Leland paid for it, and O'Neil said it tasted good. He said he was "busted." To Tim Kennedy, another chum of his, he said during the day, when he was broke, "You know, boys, when I have got the price I spend it, but I haven't got it now." Not a cent, couldn't buy a drink! Leon Woodward says in the afternoon that he said to Tim Kennedy, "I am on the hog. When I have got the price, I blow it, don't I, Tim?" Haller says that a week before, some of them say that it was three or four days before, he played pool in that room and got stuck for 40 cents, and paid it, and he said, "Now I am busted, and I feel better." That was the last penny that John O'Neil had, and he said over and over again that after that he didn't have any, so that he went home to his supper without anything in his pocket.

It is now suggested by the defence, without their saying so, — doubtless my learned friend is too honorable a lawyer to have said it himself, — that you find that he removed from his sister's pocket-book \$22 and went down and spent it. No silver was taken, nothing but bills. He was broke, he hadn't any money. He roamed around alone, and finally, at quarter past 8, he went into the bar room, where Leon Woodward was, and Wood and Kennedy were just coming out, and laid on the counter either a fifty-cent piece or two quarters, and said, "Give me a pint". *Where did he get that fifty-cent piece, or the two quarters, the first money he had shown?* It didn't come from Nellie O'Neil, for no silver was taken from her. It didn't come from any surplus of his, for he had been clean gone of money for more than a week. It was the first show of stolen money, and it was *silver*.

Ah, but you say, perhaps he had spent a bill somewhere else. Where? Tell us. We say that was the first place. We connect it with the other stories out of the mouths of his chums, by showing

what he did. Kennedy and Wood were there; he came in alone; it was quarter past 8; he bought that pint of rum, he went over then to the pool room; there he called out his chums and said to them, "Here is a pint of rum that Jim Wood gave me, because he saw his girl." They drank that up. Then he showed his money; he had *some more*.

That piece of silver, the first money shown, the first money spent, answers this miserable gauze of a story of some money stolen from his sister's pocket-book up stairs. You don't know, I don't know, how fresh this story is. It didn't exist last Monday week, at the time of the view, for, though my learned friend went so far as to show the coal box in Haller's pool room, and the distance from Geary's blacksmith shop to the scene of the murder, if the trunk and the key and the cup and the wallet so dramatically displayed on Tuesday were there, you were not permitted to see them then.

There was one woman who was not examined before the inquest, because the district attorney did not suppose that she could tell anything, being thirty miles away. It was necessary to get that money into his hands in some way or other. Nobody in town could help him. And so, at the last moment, not remembering, — and in this I in no way impute anything to my learned friend, — perhaps not knowing the letter that Nellie O'Neil had written, it occurs to somebody that perhaps she can furnish this money. It may be she had it. It may be she had some money there. Maybe she had \$22.75. It is strange that in the fall she should write to a lawyer in Shelburne Falls — people don't like to get lawyers' letters — that she had no money, that she was in debt, and if she ever got out of debt she would never get in again, and that she would commence to pay that little bill to Dr. Perry the week commencing the first of January and pay a dollar a week. Yet it may be so. People sometimes won't tell the truth under such circumstances. People in higher circles of society than Nellie O'Neil have told such tales before. It is also remarkable that when O'Neil, having known for two weeks where he got that money, — having a chance to have interviewed his mother and every one of his sisters, — had not said to them, "Oh, this is all right; when you were not looking that night at supper I went up stairs and got it and carried it off." He never told his mother or sister so, or said to Nellie, "I hope you will forgive me, it will save me from the gallows." Again, Mrs. O'Neil was taken before the inquest and sworn, and Mr. Hammond, with the gentleness of manner which has distinguished him through the trial, sat down with her and had her tell the story of that evening; and she put in every detail as she did here yesterday on the stand, excepting the fact that after supper he left the room and was gone five minutes, and she supposed he went

up stairs. What is the reason for this omission, when it was the time to have told the truth?

Even if the story of the sister's pocket-book is true, it proves nothing; but just think of it. It is another of these impossible coincidences. There are such things as having too many things happen together. This money had been put away there these three years gone by. O'Neil was and had been out of work, hungry for rum and hungry with lust, and yet, if the story of the defence is true, it was a cruel fate that led him on that night, out of all those three years, to steal it. He did not. He did not steal it, because the money that he began to spend that night never came from that wallet at all.

Who was John O'Neil? Let me not be unfair with him. Let me deal with him as gently as the facts will warrant. A man sodden with liquor; a man who when in liquor was constantly indulging in licentious conversation. A man so far lost to the sense of fairness — for there is such a thing as being a fair man, even when drunk — as to attack a couple of innocent and unsophisticated tramps that very afternoon on the street, and to lick the little one. If he had taken the big one, I would have thought more of him; but he licked the little one of the fellows, who had not given him any provocation at all. He was promising himself, the day before, a chance to indulge his unlicensed passion. He was promising himself, the night before, that he would go up the hill some night with the woman, whom he characterized afterward as "A damn fine-looking woman."

He went away from that house in liquor at a moment almost identical with the time when she was getting ready to go up. He disappeared from the sight of the world for three-quarters of an hour. In that time she was killed and raped, and \$15.50 — a ten, and five, and fifty-cent piece — taken from her dead body. He appeared in haste fifteen or twenty minutes afterwards on the road, dodging observation, and before an hour had gone by, previously having been out of money, exhibited 50 cents, a five and a ten, — as to which he has told all sorts of lies; as to which he has never given any truthful account, and as to which the only conceivable conclusion is that it was the money taken from her.

I won't spend time on the minor details. He did a great deal more worrying about the cut on his head than we have done. It was he who told the different stories about it. First that it was the coal box; next, it was the building; next, that it was the tramp that kicked him in the head. It was he that got his boon companions to look at it, and not one of them could come here and say it was fresh or done recently. Neither will I weary you at this late hour by talking to you at length about all the things he did the next day. His

mother sent him out to find out about this girl found in the bushes. Men who were at work in shops could find time to go up there. Clerks in stores could find time to go up there. O'Neil was asking every man he knew this question and that question, and yet he never dared to set his foot on the spot where the ghost of that murdered woman might stand. He would have nothing to do with it. It is one of those things that tend to show where the truth is. I am not going to read all this testimony at this late hour; but the case is full of circumstances, and they all point one way.

George Jones says, "He came to me and asked me what people were saying about finding Mrs. McCloud." I told him they were then saying she was not murdered, but died a natural death. He says, "I hope they will get the one that did it." The other man says, "I don't see as there is any one to get, if she died a natural death." Then he started along. Jones went with him and they got to the corner, and he made the remark, "What do they say?" and Jones replied he couldn't tell any more, that she died a natural death, and that was all there was to it; and O'Neil said again he hoped they would get the one who did it; and Jones said, if she died a natural death, there would be no one to get. It was about that time in the day when, as it happened, he saw one man to whom he made a visible and ocular demonstration of what the scientific results of the autopsy has shown was the way that woman was killed, by putting, somewhat rudely, his hand on Raguse's throat; and then he asked again what they said. They were having an autopsy; nothing had come out, and he said that Crittenden said she died in fits.

At last a man says, "They have found out. They say it is murder," and he changes color, looks aside, stammers, and says nothing. But rum braces him up again, and he says to Mr. Roland, "I will tell you, it was those tramps on my doorstep. Those are the fellows that did it." I don't ask you to convict on that evidence. I only call attention to the fact that he was exceedingly solicitous, exceedingly, offensively familiar with people that he was not acquainted with; explaining to Geary who she was, that she was Crittenden's daughter, for whom his mother did washing; then going across the street to Shaw, saying to him, if it was Shaw, "Who is this Mrs. McCloud?" And Shaw says, "Why, Crittenden's daughter;" and he replies, "I don't know her. I don't think I ever saw her." And he had seen her a hundred times, if he had seen her once, and his own mother had told him that very morning who the dead woman was.

But that is not by any means the most significant part of this case. What has he said about it? It is perhaps accidental, and yet I am obliged to refer to the fact, — for fact it is, — that never, in any

unequivocal language, have his lips to this moment opened to say he didn't do it. I do not now refer to his silence at this trial. That of course was his right, and the shield of that right surrounds him here. Your Honors will take care of that.

But it is a strange fact that HE HAS NEVER DENIED THE CHARGE. It may be accidental, but it is extremely significant. He was taken out of bed at half-past 5 on Tuesday morning, and he asked the officers, "What do you want of me?" The officer said, "I have got a warrant." He said, "What for?" The officer replied, "For an assault on Hattie McCloud." And he didn't deny the charge. "WHO SAYS I DONE IT?" That was not the first time he had been charged with the crime. Those four men behind the livery barn there, they must have accused him. There is no use in telling me he was drunk. It is a drunken man that lets out the truth. It is a sober man that knows enough to keep still or to speak falsely. Those men behind the barn must have got on to the fact that he was in this crime. He bragged too much in his cups, and that keen, pretty girl who came, heard those fellows, Couard, Morrissey, Kennedy, Woodward and O'Neil. They were discussing and disputing together. Before that they had been indulging in the same kind of talk about the ten-dollar bill, and had made constant use of the word "her," which may mean a ship, or a horse, or a woman; and finally, in their altercation, one of them charges him with this crime. "You know damned well you done it, and you are a damned mean cuss." What then? Not guilty? Oh, no. He had made a fool of himself all day long, and had been talking too freely; and finally in the afternoon they put the question right to him. He didn't deny it even then. There may be nothing to it, but is it not strange that he never denied the charge?

Only last Wednesday two men were working in the hay field on the meadows of Deerfield as far from the suspicion of the ears of the prosecution in this case as it is possible for two men to be. In the comradeship which is established between fellow workmen, one of them, who had been in jail, said to the other one, who had been a college student (for so do we mingle in our democratic way in this country), "I know enough to hang that Jack O'Neil. He said to me, 'They can't convict me of doing that thing, for it was O'Connell that did the choking, and I got part of the money!'" I quote from memory, but that is only the substance. He also said that others in jail heard O'Neil say it. You believe he said that down in that hay field, don't you, because you believe that college student and Mr. Hawkes, too. It is not evidence that O'Neil did say so. His Honor will take care of that part of it by the charge. But it is in evidence

that Curtis said it, and it was not a thing that was said up here in this court room, nor in Mr. Hammond's office. No, it was said away down there, apart from the scene.

Well, now, a man that has been to college ought to know something, and that student did. He said to himself, "The government ought to know about this; it is my duty to go up and tell it to the prosecuting officers." And so it was that Mr. Greene, whose zeal in the prosecution of this case has only been equalled by that of the district attorney, learned of it, for in the evening of that Wednesday this college student told him what that man down in the hay field had told him. This is the conspiracy that my friends talk about. And the next train that goes to Concord is at 3 o'clock in the morning, and a *habeas corpus* is obtained from the honorable justices that preside here, and the officer goes down there to bring up the man Davis, to whom that thing was said. That man never saw Curtis, that man never saw Schenck, that man was brought in from confinement and told substantially the same thing that Curtis did, varying it just enough so that you could see that it was not a stereotyped statement. And then we heard of Schenck from Curtis's testimony, which you have before you, and learned that he was in State's prison; and we sent an officer down for him and brought him up here, and without having opportunity, as appears in the evidence, for seeing either of the others, he told the same story.

I admit they are bad men; I admit they have been convicted of stealing; I admit that they are thieves and liars; but they are men, and their story is to be judged of exactly as any other man's story is. If the mayor of my city, or the governor of this State, tells me a story that is inherently false, his office does not make it true. If a convict tells me a story that comes with every inherent probability of truth, the stripes that he wears do not alter the truth.

Away off in Concord, away off in Charlestown, away off in Deerfield, three men are brought from those places without having seen each other, and all tell the same detail of incident.

A man comes into my office and says, "I want you to lend me a dollar; my wife is sick and starving, I want to get something for her." I know he is an ex-convict, and I may say to him, "You are a convict, an ex-convict, a thief and a liar, and I don't believe you." But the next day that man comes in and says, "Your horse has got unhitched, and is running away down street;" or "Your child has been run over by a bicycle and lies injured out in the street." I do not say to that ex-convict, thief and liar, "You are an ex-convict, a thief and a liar." I get up and go out to save my child or horse. It was Robert Burns who said, "A man's a man for a' that." These men are men, and they are to be judged as men. I agree that we

should not ask you to convict O'Neil alone on that sort of testimony. But the genuineness, the freshness, the lack of any preparation, the suddenness with which these men are brought here, forbids any concert among them.

Now, what is the story of the defence to meet this? That in jail Davis said, "Let us turn State's evidence on O'Neil, put up a job on him, and then we can get off ourselves." But he did not do it. He took his medicine. He never said anything about it. Schenck never said anything about it; and the governor is not in the habit of pardoning people because they are taken out to testify in a murder case, as every one knows. Their chance is gone, if there was anything to it. The time for them to do anything was when they were arraigned, when they could send word to the district attorney and say, "Mr. District Attorney, I have important information to give you about this murderer O'Neil that you have got in jail, but I will not give it to you unless you let me off." But it went out of their minds, and they went off and never thought anything about it until they reached this court room, and they were put on the stand in their prison clothes, and told their story.

Now, what is the significance of that story? They are not bright enough, any of those men, to understand the significance of it. If they were going to put up a job, they would have had a confession from him, instead of that false denial. But it is one of those false denials that is pregnant with guilt. They did not say that he said, "I choked her." They said that he said, "They can't convict me of that crime, because O'Connell did the choking." They did not know, any more than O'Neil did, what his Honor will tell you by and by, that it does not make any difference whose hands do the choking. It was not a confession they were putting up on him; it was a guilty man's attempt at denial, for from the time of the first murder until to-day, crime has always to say, "It is another, and not I, who did it."

I would not ask you to convict on that, but I ask you to treat David Davis fairly. He is the under dog. His neighbors up there, some of them, say he is a liar. Others of them, pretty respectable men, say they never heard of him until he got into this trouble stealing chickens. He has gone on the wrong side of the road, yet he is a man, and when he tells a story, we are not to brush it aside. We find out how that story connects, and judge of the story on its probabilities, and when it fits everything else in the case, we put faith in it.

And so we find that from the beginning he has never denied the crime; when his comrades spoke to him, — those whom he supposed he could trust, — when they said, "You know you did it," his answer was, "That's all right." When the charge was made against

him by the officers, when he was arrested, he said, not, "I didn't do it," but, "Who says I done it?" He told these men, not that he did not have anything to do with it, but, "They can't convict me, because O'Connell did the choking." No human being has been found to say he ever denied the crime excepting by the plea he entered to this indictment.

You cannot remember all this evidence, gentlemen, but I have endeavored to bring some of the main facts back to you. You have been separated from your homes. You have been shut up by yourselves. Why? Because society demands that on the one hand O'Neil should be tried fully and fairly, without the slightest chance of any improper influence being exerted, and on the other hand that the Commonwealth shall have the benefit of the services of men who shall not be swayed by what they hear outside. You have all said to the court that you have not formed an opinion in this case, — opinions that will have any weight upon you after hearing the evidence. You have all said that you subscribe to the law of Massachusetts, — that, if a man is found guilty, he shall be convicted and hanged. But you are also able to appreciate the truth of the proposition that the consequences of your verdict are not yours, but his; and that you are no more responsible for those consequences than is any man in the Commonwealth by whom or whose representatives the laws are made, or than is the judge who imposes sentence or than am I, who have the honor to address you at this time.

You are not the men who inflict the punishment. It is the law that inflicts the punishment upon him, because he did it. But I appreciate the fact, gentlemen, that it is an awful strain; I appreciate the fact that it requires something more than the little amount of enterprise and courage and steadiness of nerve that is called for by daily occupations to file into this court room by and by, and say, "We are obliged to find, from this torrent of circumstances made up of these rills, little by themselves, — this torrent of circumstances that cannot be dammed up, that this man did murder that woman."

You cannot know it. No man ever can know. If a witness comes here and says he saw it, you might not believe him. You wouldn't know it any better. No jury can ever know that a crime is committed. The law which is human, the justice of the Commonwealth, which is not infallible, does not call upon you to know. It only calls upon you to believe to that moral certainty which induces your ordinary actions; and to have that moral certainty you reach, when, after hearing all the evidence, you say to yourselves, "That must be so," not, "I know it to be so." The verdict means, not, "I know that he is guilty," but, "After all I have heard, he *must* be guilty."

And when you have considered his previous conduct, his previous

declaration of purpose, his having the money, which he could not have stolen (that fifty-cent piece is a little thing, but it is entirely exclusive of the truth of the pretended or attempted story of the larceny from the sister); when you find that he attempts with some boasting to account for himself, and fails as to the very time he promises to do it; when you find that decent men and women see him coming running from the scene of the murder; when you find him spending his ill-gotten gains in exactly the same denominations as the money that was taken from the dead woman; when you find that he never denies, but he evades, — there is but one answer.

You sit here in the quiet of this court room, gentlemen, and yet you can but know that Massachusetts is looking at you. All over this State, down upon the sands and bays of the Cape, women are saying, "Are the laws established by man sufficient to protect us, or does the machinery of justice fail?" Up in the mountains of Berkshire people are asking the same thing. Girls go home at night, with bated breath, to learn what shall be the result of this solemn proceeding. Men all over the State are asking, "Has the courage that subsisted in the fathers descended to the sons?"

The longer I live, Mr. Foreman, the more intimate grows my acquaintance with human conduct, the more I become impressed with the proposition that the difference between virtue and vice, between success and failure, between duty and neglect, between manhood and slavery, is courage. You are selected because you come of the stock that settled this wild country, that helped to see it through its dangers of fire and flood and foe, that has stood by duty whenever there was temptation to go astray, and that has made this country great.

Everything that ever will be known about this case is known now. Shall justice fail because you shrink? By and by, when you get through with this court and go home, do you expect to enjoy life? You have not failed to learn, gentlemen, that there is but one real happiness in this life, and that happiness comes of the consciousness of duty done. There is no other reward that endures. That dead woman in the bushes, that child, orphaned, to be brought up by others, appeals to you to do your duty by avenging this crime. According as you do that duty, will you be able to hear the voice of God saying unto your souls, "Well done, good and faithful servant."

MASON, C. J. It may not be amiss, gentlemen, to remind you that this case is not yet committed to your charge finally. Keep your minds open until the last word has been given to you. You may now retire with the officers until to-morrow morning.

Adjourned to Wednesday, July 28, at 9 A.M.

NINTH DAY.

JULY 28, 1897.

The roll of the jury was called, and the prisoner answered to his name.

MASON, C.J. John O'Neil, you have been fully heard by counsel, but, in accordance with the usage in the Commonwealth, you are now afforded opportunity to address the jury in person, if you desire to do so.

JOHN O'NEIL. I don't care to say nothing.

CHARGE.

MASON, C.J. Gentlemen of the jury: When a quiet community within a law-abiding Commonwealth is startled by public announcement that two of the gravest crimes known to the law have been committed in its midst, — that a virtuous and highly esteemed woman, living peaceably and without offence to any, has been outraged and murdered, — a grave responsibility rests upon the community itself to restrain its righteous indignation, that it find no expression in lawless procedure; and a grave responsibility also rests upon the officers of the law and upon every one connected with the prosecution of the crime, that every resource of the government should be exhausted to discover the offender and bring him to punishment, that no mistake shall be made, that no man shall be even charged with such wickedness upon insufficient grounds. The constitution of the Commonwealth, as interpreted by the highest judicial tribunal, permits no man to be put upon trial for an offence of this gravity without true presentment or indictment by a grand jury. The shocking event at Buckland on the eighth day of January was, after due and regular preliminary proceedings, brought promptly under investigation by the grand inquest for this county, and in March the grand jurors, under the solemn responsibility of their oath by formal indictment, charged John O'Neil, the prisoner at the bar, with the crime of murder. The prisoner has now been placed on trial upon this indictment. The case of the government has been presented, as was meet that it should be, by the highest law officers of the Commonwealth, aided by an attorney for the district of high standing and ability. There is no reason to doubt that all which professional skill of the highest order can present in support of the charge is before us. The defence of the

prisoner has been conducted by learned counsel of his own selection; witnesses have been summoned in his behalf, as provided by law, at the expense of the government; and it may be fairly assumed that all which professional fidelity and zeal could suggest to meet the case for the government, is also before us.

You have been selected from the citizens of the county to serve as jurors. Your names were first put on the jury list of your several towns as men having the statutory qualifications, — good moral character and sound judgment. You were then drawn by lot, with others, to attend the present sitting of the court. With great care it was ascertained, by questions put to you under oath, that you stood unbiased and unprejudiced in the cause. Either party had unlimited right to challenge any juror called, for legal cause shown. And, to make it still more certain that no juror should serve against whom either party could find reasonable objection, each had a statutory right to challenge twenty-two jurors without giving any reason therefor. Surely the Commonwealth has secured to the prisoner his constitutional right to have the facts pertaining to this grave charge verified in the vicinity where they happened, and to have them tried and determined by a tribunal as free, impartial and independent as the lot of humanity will admit. If there are errors of law in the proceedings, these will be examined and corrected by the court of last resort, so far as they can operate to the prejudice of the prisoner.

As we now approach the completion of a trial of most serious moment to the entire community and to the prisoner at the bar, we cannot, if we would, ignore the solemn responsibility under which we act. No right-minded person can wish to put aside the gravity of the issue upon which you are now to pass as jurors. It may never be your privilege to render a greater service than will be rendered by a true verdict in this cause. The gravity of the issue, the solemn responsibility of determining it, may well induce the most careful study of the evidence and full deliberation upon its weight and significance. But it must not be permitted to beget mental timidity and inability to act. There is no escape from the responsibility which has come to you, save in a faithful effort to render a true verdict according to the evidence given you, whether it be a verdict of conviction, or whether it be a verdict of acquittal. Do not forget that the consequences of decision are as momentous to the community as they possibly can be to the prisoner at the bar. The Commonwealth has in view only the protection of its individual citizens, and is as solicitous for every right of the prisoner as for those of any of its citizens. A false verdict against the prisoner thwarts the purpose of the Commonwealth as effectually as a false verdict in his favor. If a true verdict involves a conviction, the misfortune to the prisoner is that

extremity lies not in the verdict, nor in the penalty which the law affixes, but in the sad fact which makes the verdict true. A false verdict of acquittal can lift but a minor part of the murderer's burden. It changes not a whit the character upon which the revolting crime has wrought ruin.

Counsel upon the one side and upon the other have studied faithfully the mass of testimony introduced, that they might discern the full significance of every part of it, and have sought, each with earnest zeal for the interests intrusted to his charge, to bring to your attention, in the most forcible and convincing manner, every legitimate suggestion in aid of his contention.

This should be of material aid in your study of the evidence. Counsel would be but poorly equipped for the service assigned them if they were not able, by concentrated and critical study of the facts, to bring to light much of significance which would escape the observation of those who study them under other conditions.

While neither court nor jury can safely ignore the suggestions of counsel in seeking the truth upon any issue submitted for decision, care must be taken to distinguish clearly between that which counsel aid you to see is the real significance of testimony, and that which is only the suggestion of counsel,—which can be found in the evidence only as read into it by professional zeal and intense desire to find it there. The suggestions of counsel upon either side must not take the place of testimony. But you should not be afraid to give them their legitimate course, and be aided by them in reaching your own conclusion.

With this preliminary reference to the general principles applicable to the duty which we have in hand, it remains for the court to state the law upon the essential elements of the charge against the prisoner at the bar.

The indictment contains but a single count, and that in as simple form as, under the present system of criminal pleading, it well can be. With due formality, but in plain, clear language, it charges murder. The indictment itself is not evidence. The fact that it was presented by the grand jury upon the solemn responsibility of their oath, is not evidence in its support. No presumption of any kind against the prisoner arises from the charge itself, nor from any of the proceedings leading to its presentation.

The prisoner comes before you with a legal presumption of innocence, based upon the common experience that men do not ordinarily commit crime. Eminent legal writers have contended that this presumption is a mere negation, a mere absence of ground for inference of guilt until that ground is supplied by affirmative testimony. But the weight of authority holds it to be somewhat more than this. The

presumption has affirmative character in itself, some tendency to establish the fact of innocence. Its affirmative force may be very slight with reference to offences involving but little moral obliquity, and may be somewhat more with reference to offences which shock the moral sense of the community. Surrounding circumstances and conditions may greatly affect its convincing force, and whether it has appreciable weight to control or meet affirmative evidence of guilt in any given case, is for the jury to determine. The presumption of innocence remains a complete protection to the prisoner until guilt is established by affirmative proof.

You cannot go far in determining whether the charge is proved without a clear understanding of what the charge embraces. An indictment in this form, while it charges murder, necessarily includes a charge of manslaughter; and when the evidence establishes the lesser offence, but does not establish beyond reasonable doubt the additional element necessary to constitute murder, there can be a verdict of guilty of manslaughter. As this case is submitted, there is no occasion to dwell upon the application of this evidence to the crime of manslaughter considered as a separate offence. There is no contention that the crime of manslaughter was committed on the 8th of January, except as it was merged in the graver offence of murder.

Murder is the unlawful killing of a human being with malice aforethought. "Malice," as here used, does not necessarily imply hatred or ill-will toward the person killed, but has a more comprehensive meaning, including any intention to inflict injury upon another without legal excuse or palliation. If the wicked intention to do injury to another precedes the act by which the injury is done, it is malice aforethought. If a homicide is committed without legal justification or palliation, that is, without due authority of law, and not in self-defence or in the heat of passion upon grave provocation, but with a specific intention to take the life of the person killed, or do an unlawful act, the natural and probable consequence of which will be to deprive another person of life, it is murder.

Homicide committed, or caused, by one engaged in the commission or attempt to commit rape, arson, burglary or robbery, is murder; and where two or more persons conspire either to commit a homicide, or to commit either of the grave felonies just named, and, in the execution of the design which is the subject of such conspiracy, a homicide is committed, it is murder on the part of all the conspirators who take part in the execution of the design, whether having any direct part in the homicidal act or not. All persons aiding by their presence the commission of murder, and sharing in the murderous purpose, are principals in the crime, whether directly participating in the homicidal act or not.

To sustain the charge of murder upon this indictment, it is not necessary to prove that the offence was committed at the time named; but it must be shown that, at some time prior to the finding of the indictment, Hattie Evelyn McCloud came to her death in the manner and by the means set forth in the indictment; and that the prisoner, John O'Neil, was the person who committed the act or acts from which her death resulted, or that he was present aiding or abetting their commission by some other person, or that the homicidal act was committed in the execution of a design to commit the crime of rape or robbery, in which design and its execution the prisoner had active participation.

The burden of proof is upon the government throughout to establish every essential element of the charge beyond a reasonable doubt. The prisoner has a right to remain passive, and avail himself of any inability of the government to prove his guilt or of any failure to prove the full gravity of the offence.

By proof beyond reasonable doubt is not meant proof to an absolute certainty. We have only human tribunals to weigh testimony, and only human testimony from which to obtain the evidence to be weighed; every investigation depending upon human judgment or human testimony must have the limitation of the possibility of error. It is possible to defeat the administration of justice, and paralyze judicial proceedings for the punishment of crimes, by exaggerating the force of the phrase proof beyond a reasonable doubt; but we must not go to the opposite extreme of assuming that the words have little or no meaning. No offence can be proved to absolute certainty, but a high degree of proof is exacted, — proof to that degree of certainty that you would act upon in the important affairs of life, proof to that degree of certainty which excludes every other rational hypothesis.

The prisoner's right to hold the government to this strictness of proof is an absolute right. No considerations of public safety, no righteous indignation at an atrocious crime which shocked the community, no zeal for the suppression of crime, can give to the court or jury discretion to relax the rules of law, or to strain the evidence to any conclusion not warranted by its fair, convincing force. The government of this Commonwealth is a government of laws, and not of men. If the guilty goes unpunished to-day, because jurors observe their oaths and render a true verdict according to the evidence given them, the community and every citizen in it is still safer; since the law rules. The court cannot state this principle too strongly as a principle to be observed to guard the rights of the prisoner. We should fail in our duty if we did not with equal emphasis remind you that the community is not safer if only the rights of those charged

with crime are recognized and guarded. The right of the government to have a verdict commensurate with its proof is as absolute and sacred as the right of the prisoner that it shall not have more. If it is established by this evidence, beyond a reasonable doubt, to that degree of certainty upon which you would act in the important affairs of life, that the prisoner is guilty of murder as charged in the indictment, you have no discretion which permits you to acquit him; and if a verdict of guilty is withheld, the law does not rule, but the uncertain and arbitrary will of men.

In the effort of the government to sustain the burden of proof which rests upon it, to prove the charge which it has made against the prisoner, it has had occasion to use two classes of evidence, ordinarily designated as direct and circumstantial evidence; and it may not be amiss to comment briefly upon the characteristics of each class of evidence, and some principles to be applied in the use of it.

Direct evidence is testimony from personal observation tending directly to the proof of a fact which is the subject of judicial inquiry. Circumstantial evidence is also in origin testimony from personal observation, but not tending directly to the proof of the fact in controversy, but to the proof of other facts and circumstances so related to the fact in controversy that the fact in controversy may be properly inferred from the other facts and circumstances proved. Circumstances may be so interwoven with each other that they furnish most effective proof each of the other. A fact or circumstance clearly established is as competent to establish another fact to which it is related as for use in proof of the main fact in issue; and the two facts combined may aid in establishing still other facts for like use in support of the fact in controversy.

The force of circumstantial evidence lies not in the separate significance of the facts or circumstances established, but in their combined significance. The distinction between the two classes is not so clear, nor the dividing line which distinguishes one from the other so well defined as might be hastily assumed. In not a few instances it would be extremely difficult to determine whether testimony was direct or circumstantial evidence, and sometimes that which at first seems to be of one class is found, upon closer analysis, to be the other.

There is a prevalent impression that circumstantial evidence is less convincing and more unreliable than direct evidence, but there is no rule of law which assigns greater force to one class than the other. To use the language of Chief Justice Shaw: "Each of these modes of proof has its advantages and disadvantages. It is not easy to compare their relative value. The advantage of positive evidence is that you have the direct testimony of a witness to the fact to be proved, who, if he speaks the truth, saw it done, and the only ques-

tion is, whether he is entitled to belief. The disadvantage is that the witness may be false and corrupt, and the case may not afford the means of detecting his falsehood. But in a case of circumstantial evidence, where no witness can testify directly to the fact to be proved, you arrive at it by a series of other facts, which by experience we have found so associated with the fact in question in the relation of cause and effect, that they lead to a satisfactory and certain conclusion. As, when footprints are discovered after a recent snow, it is certain that some animated being has passed over the snow since the fall, and by the form and number of the footprints it can be determined with equal certainty whether it was a man, a bird or a quadruped. Circumstantial evidence, therefore, is founded on experience and observed facts and coincidences establishing a connection between the known and proved facts and the facts sought to be proved. The advantages are, that, as the evidence commonly comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail of their purpose. The disadvantages are that a jury has not only to weigh the evidence of facts, but to draw just conclusions from them; in doing which it may be led by prejudice or partiality, or by want of due deliberation and sobriety of judgment, to make hasty and false deductions, — a source of error not existing in the consideration of positive evidence."

To this concise summary of Chief Justice Shaw much might be added presenting advantages and disadvantages of each class of evidence; but it would remain difficult and perhaps impossible to determine which is, on the whole, the more satisfactory and reliable, least liable to error in the results to which it leads. The weight and convincing force of direct evidence may be greater in one instance than any chain of facts and circumstances tending indirectly to establish the same facts; while in another instance the weight and convincing force of facts and circumstances which furnish indirect evidence are conclusive against the most positive and direct evidence.

Suppose the fact in controversy is, whether a certain house was visited during a winter night, and you have the direct evidence of two witnesses, who claim to testify, from personal observation and constant watch, with unobstructed view, and say that no person or carriage came near the house during the night; and you also have your own observation that a heavy fresh snow fell during the early portion of the night, and at daybreak there were unmistakable wheel and foot tracks through the fresh snow from the street to the door of the house, and footprints upon the threshold and fresh snow tracked into the hall of the house, — you would not be slow in finding that the two watchmen were lying, or had been asleep without knowing it.

The circumstantial evidence would plainly outweigh the direct evidence. In any given case, it is of but little moment whether the evidence by which it is sought to prove crime is classified as direct or circumstantial. The vital question is, What is its weight and convincing force?

Evidence of confessions is not evidence tending directly to establish the criminal charge, nor any essential element of the charge. On strict analysis, it must be deemed of that indirect character which places it with circumstantial evidence. Confessions themselves, when clearly established, are of such weight that evidence tending to prove them seems at first thought to be direct evidence of the crime. It is quite conceivable that, although direct evidence tending to establish a criminal charge, together with all the other circumstantial evidence tending to the same result, may be consistent with some other hypothesis than that of guilt, and, standing alone, require acquittal, there may be evidence of confession so clear and unmistakable that the fact of confession cannot be questioned, and the confession itself so convincing that the mind accepts it as proof of the criminal charge to a moral certainty, irrespective of any other fact. But confessions or admissions may be full, or partial; may be expressed, or implied; and thus may vary widely in convincing force. To be competent as evidence they must be shown to be voluntary and not obtained upon any promise or inducement. When partial only, and proven from the force of what they imply rather than what is distinctly expressed, they should be received with caution, and the evidence tending to prove them should be closely scrutinized.

All the evidence which has been admitted is to be regarded by you as competent for your consideration. You are to weigh it honestly and as impartially as you are able, — as impartially as the limitations of the human mind will admit. So far as you have testimony from personal observation, whether in direct proof of material elements of the criminal charge, or in proof of circumstances or facts which indirectly tend to support the criminal charge, you are to test the truthfulness and accuracy of witnesses by every means which your own experience and sound judgment enable you to apply, the character and intelligence of the witnesses as manifest upon the stand; the inherent probability or improbability of the statements made; the motive, if any, which the witness may have to color or strain the facts; the conduct of the witness under cross-examination; his or her manner throughout, whether it be swift or zealous in behalf of the interest in which he or she is called, or quiet and careful, temperate in statement, and mindful of the obligation of an oath; whether the witnesses make contradictory statements, and, if so, whether these are of a serious character, or slight slips of memory

not materially affecting your confidence in the truthful intent; whether the witness is not only truthful in intention, but has the gift and habit of accurate observation; whether the statements of different witnesses upon the same point are conflicting or corroborating; where it is shown that witnesses have been convicted of crime, that fact is to be considered in determining their credibility. There is no rule of law that a man cannot be believed because he has been convicted of crime. Circumstances may show that the witness can have no possible motive to testify untruly. His conduct and appearance may give you entire confidence in the truth of his statement, but the fact that he has been convicted of crime can be shown, and, when shown, must be considered in determining whether you do believe him. The nature of the crime which the witness committed may greatly affect the weight of the conviction to impeach its credibility; but there is no rule which compels a jury to discredit a witness, if, testing his statements fairly, with reference to all the circumstances under which they are given, the jury in fact do believe him. Where evidence of a bad reputation for truth and veracity has been presented, the fact of such reputation must be given due weight in determining what credence you can give to the discredited witness. A witness of poor reputation for truth may tell the truth in any given instance, and the surrounding circumstances and conditions may furnish the means of determining with great certainty that he does so. It is your province and your duty to apply practical tests to the statements of witnesses of poor repute, and determine for yourselves what of their testimony you believe and what you do not. These principles and every other test which your own experience or the suggestions of counsel enable you to use, you will apply to the direct evidence of witnesses from personal observation.

So far as you have circumstantial evidence, the facts or circumstances essential to the inference of any element of the criminal charge must be established or proved beyond reasonable doubt. A chain of circumstances tending to establish the criminal charge, each one of which is essential to the conclusion of guilt, must have each fact constituting a link in the chain itself established to that degree of certainty that you would act upon it in the important affairs of life. The facts, the circumstances from which guilt is to be inferred, must be consistent with each other, and the whole evidence taken together must be inconsistent with innocence. Not every circumstance or fact upon which the government relies, or which it seeks to establish, is required to be proved beyond reasonable doubt, but only such as you find it necessary to rely upon to sustain the conclusion of guilt. There may be circumstances which the government seeks to establish, and which would be of convincing force if proved beyond

reasonable doubt, and the government may be confident that they are so proven; but if you are not satisfied that they are established with sufficient certainty, it may be that these circumstances are not essential to the inference of guilt; that without them the circumstances which are proved beyond a reasonable doubt are of such weight and convincing force, lead so irresistibly to the inference of guilt, that they are consistent with no other conclusion, and that a true verdict upon the evidence as you find it must be a verdict of guilt. But so far as you find any fact or circumstance essential to the conclusion of guilt, that fact or circumstance must itself be established beyond reasonable doubt.

It is a well-settled principle, that when a party withholds from the court or jury evidence material to an issue on trial, and which is obviously within reach or control, the court or jury may fairly infer from its absence that it would not be favorable to the contention of the party withholding it. This principle applies to the trial of a criminal case, with one notable exception, to which your attention should be called. The prisoner at the bar is not a competent witness in the case. He can become so only at his own request, and the statute which permits him to become a competent witness expressly provides that no inference to his prejudice shall be drawn from his failure to do this. The statute is imperative, and you have no right to infer anything to his prejudice upon any issue involved in this trial from his failure to testify. The case must be determined upon the assumption that he is not a competent witness, and precisely as it would be determined if the incompetency could not be removed.

There is evidence in this case that some of the witnesses have made statements elsewhere in direct conflict with the testimony which they have given here, notably in the case of Walter Curtis. Such statements made elsewhere are competent to affect the credibility of their testimony here, but are not evidence to establish any fact asserted in any such statements elsewhere. The statements of Curtis at Deerfield, if proved, are not evidence of the truth of what he there asserted, but are competent to shake or destroy your confidence in what he testified to here in conflict with the assertions at Deerfield, and thus destroy the weight of the testimony here in contradiction of Davis and Schenck. And the same principle is to be applied to all statements which witnesses make elsewhere in conflict with their testimony here. The court makes no suggestion whether any fact or issue in this case is or is not proved beyond reasonable doubt, neither the main fact of the criminal charge itself, nor any other fact nor circumstance in controversy. It is primarily your province, and yours alone, to determine what facts are proved. The court ventures no suggestion what evidence is strong, or what evidence is weak. It

is your province, and yours alone, at this stage of the case, to apply the principles of the law which have been given you to the evidence, and determine what is of convincing force, what is strong and what is weak.

Take the whole evidence, whether upon rigid analysis any portion of it should be called direct or circumstantial; weigh it honestly, impartially, without fear or favor; apply to its consideration the intelligence which has been given you, the knowledge and judgment that you have gained from experience in the world; and, reverently mindful of your obligation to the prisoner at the bar and to the community whose great interest are intrusted to you, render a true verdict and only a true verdict. Say upon your own judgment and upon your own consciences whether the government has sustained the criminal charge of murder against the prisoner, to that degree of certainty that you would act upon in the important affairs of life. The conclusion which satisfies your judgment and consciences must satisfy others, — that no man has been unjustly condemned, and that no murderer has escaped through miscarriage of justice, through moral timidity of jurors.

If that conclusion is that the charge of murder is not sustained, your duty ends with a verdict of not guilty. If fidelity to your judgment and consciences compels a conclusion of guilt, you have the further duty of determining the degree of murder.

The statute provides that murder committed with deliberately premeditated malice aforethought, or in the commission of or an attempt to commit a crime punishable with death or imprisonment for life, or committed with extreme atrocity or cruelty, is murder in the first degree. Murder not appearing to be in the first degree is murder in the second degree. The degree of murder shall be found by the jury.

You will observe that it is only necessary to have a clear conception of what constitutes murder, — the unlawful killing of a person with malice aforethought; and a clear understanding of what circumstances give to the crime the character of murder in the first degree. All murder not appearing to be murder in the first degree is murder in the second degree. When murder is proved, it is to be deemed murder in the second degree unless one or more of the characteristics of murder in the first degree is proved beyond a reasonable doubt.

We have seen that to constitute murder the wicked attempt to injure must precede the act which results in death. It is not a question of duration of time, but of the order of events. Deliberately premeditated malice aforethought is something more than malice aforethought; it is something more than mere intent to injure, existing before the fatal act. It does not necessarily involve extended time.

Mental operations may be, and often are, very rapid. But it does

imply that the murderous intent was the subject of deliberation and reflection ; that the killing was the result of a design or plan formed upon deliberation and reflection by a person having at the time sufficient mental capacity to reflect and deliberate.

For instance, it is a familiar principle of law that drunkenness is no defence to, or even palliation of, crime. A drunken man who commits murder is as responsible for the crime as if he were sober. The murder which he commits may be murder in the first degree, if accomplished in the perpetration or attempt to commit a crime punishable with death or imprisonment for life, or if committed with extreme atrocity or cruelty. It may even be murder in the first degree because of deliberately premeditated malice aforethought, if the drunken man retains sufficient control of his faculties to enable him to reflect and deliberate, and does in fact deliberately premeditate the murderous intent, and commit the murderous act pursuant to a plan or design formed from such meditation ; but murder cannot be of the first degree on this last ground, unless the murderer has sufficient possession of his faculties at the time, and prior to the fatal act, to reflect and deliberate. To convict of murder in the first degree on this indictment because of deliberately premeditated malice aforethought, it must be proved beyond reasonable doubt that the prisoner, at the time of the murder and for some appreciable time before, was sufficiently sober to be capable of reflection and deliberation, and did reflect and deliberate, with reference to the murderous act, and that such act was the result of a design or plan formed therefrom.

Murder is also of the first degree if committed in the commission of, or in the attempt to commit, a crime punishable with death or imprisonment for life. The crime of rape, which is the carnal knowledge of a woman by force and against her will, is punishable with imprisonment for life. The crime of robbery, which is larceny from the person by violence or putting in fear, is also punishable with imprisonment for life.

By this is not meant that the extreme penalty must necessarily be imposed, but that it may be, — that the offences are so punishable. If it is proved beyond reasonable doubt that the murder charged in this indictment was committed in the commission of, or in the attempt to commit, the crime of rape, or the crime of robbery, it is murder in the first degree.

Murder is also of the first degree if committed with extreme atrocity or cruelty. Atrocity means simply wickedness. Cruelty also primarily refers to the quality of the act rather than to what may result to the victim. But both are words in common use, are used in the statute in no special or technical sense, and are to receive their common and ordinary interpretation.

All murder is atrocious, though possibly all murder may not be cruel. Extreme atrocity must imply greater wickedness than murder as ordinarily committed. Extreme cruelty must imply a greater degree of cruelty than is involved in murder as ordinarily committed. If it were possible to grade murders as to the degree of atrocity or cruelty involved in their commission, and to give marks for each murder with as much approximation to accuracy as a teacher would mark a recitation or examination, a mere excess in the mathematical average of either atrocity or cruelty would not constitute extreme atrocity or cruelty, nor can any mathematical proportion be stated as constituting an extreme degree. It is not to be measured by any abstract statement of a rigid rule of law, but it is to be determined by the jury as a plain, practical fact.

If you find that the murder charged in this indictment was committed with extreme atrocity or extreme cruelty, it is murder in the first degree.

Any given instance of murder may be of the first degree upon all the grounds designated in the statute or upon any one or more of those grounds. For instance, it might appear that the murder charged in this indictment was committed with deliberately premeditated malice aforethought, and that it was committed in the commission of, or attempt to commit, a crime punishable with imprisonment for life, and also that it was committed with extreme atrocity or cruelty. Or it might appear that it was committed with the first two characteristics, or with the last two characteristics, or with either one of the several characteristics. And in any of these cases the murder would be of the first degree.

The burden of proof continues upon the government with reference to the degree of the crime, as fully as upon the prior question of whether the crime itself was committed. The murder, if committed, must be deemed murder in the second degree, unless one or more of the characteristics of the first degree is proved beyond reasonable doubt.

The logical order in which the testimony has been presented will materially assist you in determining each fact essential to establish the criminal charge made, as well as each fact material to the degree of murder, if murder is proved. First, in this order, there is evidence tending to show the death of Mrs. McCloud; also the time, place and circumstances of finding her body. I am not aware that upon these facts there is any material conflict of testimony or controversy of counsel. Second, there is evidence tending to show the condition of the body when found, and the significance of what was then discovered, to show the cause of death and the outrage connected with it.

You will determine the limitations of this evidence, and its proper qualification, if any, and how far there is any conflict of testimony; what facts are established by it, and also the weight of such facts as are established to sustain the contention of the government that the death of Mrs. McCloud was caused in the manner and by the means set forth in the indictment, and that the homicide was committed in the commission of, or attempt to commit, the crime of rape. The candid concession of counsel will aid you upon this point.

Again, there is evidence tending to fix the time when the homicide was committed, by tracing the movements of Mrs. McCloud for some hours prior to her disappearance and by outcries heard at different points. There is evidence offered to control both features of the evidence, to fix the time. You will determine, upon all the evidence, how far the time of the homicide is established.

There is also evidence tending to show that the prisoner was in the vicinity, with opportunity to commit the homicide; that, at the time of its commission, the prisoner was neither at his home nor at any of the places where he spent other portions of the day and night of the homicide. There is also evidence tending to show that the prisoner was at home so near the time of the homicide, and was elsewhere so soon after its commission, and thence continually for many hours, that it was physically impossible for him to have been present at the homicide.

There is a most earnest controversy upon this point, and it is of vital materiality. You will weigh with the greatest care this conflicting evidence, and determine whether, at the time of the homicide, the prisoner was or was not in the vicinity, with opportunity to commit it. There is evidence tending to show a motive on the part of the prisoner to do acts resulting in the terrible crime now charged, — a lustful purpose directed towards the deceased. It is no part of the obligation of the government to show a motive for the commission of the crime. Possibly no adequate motive for crime can be shown. But when any motive is shown, it may be considered with other evidence tending to establish a criminal charge. You will determine what credence should be given to the evidence on this point, what weight any fact established by it should have in establishing the main fact in issue. There is evidence tending to show the sudden acquisition of money by the prisoner on the night of the homicide; that the money so acquired was similar in amount and in denomination of the bills of which it was composed to that shown to have been in the possession of Mrs. McCloud immediately before her disappearance. There is evidence tending to account for the sudden acquisition of money, and its resemblance to the money of Mrs. McCloud. You will weigh this evidence carefully, and say

whether Mrs. McCloud had the money alleged, and also determine how far the evidence tending to explain and account for the prisoner's admitted sudden change of pecuniary condition, and its attendant incidents, does explain and account for them, and destroy their force as evidence of the principal fact in issue. There is evidence tending to show the conduct of the prisoner on Saturday, the day after the homicide, claimed to be conduct unnatural in an innocent man, as, upon the theory of innocence, the prisoner then was. There is controversy both upon what the conduct of the prisoner was on that occasion, and in reference to the significance of that conduct; and you will follow this evidence carefully, and determine what conduct is proved, and what inferences, if any, can be properly drawn from it that are material to the issue you have in charge. There is controversy whether the statements claimed were in fact made. You will determine what, if any, conflicting statements were made, and what is their force as proof of guilt. There is evidence tending to show that the prisoner made certain statements to fellow prisoners in February last, which it is claimed were in the nature of admissions or partial confessions. There is very earnest contention that the evidence of these statements is unreliable and inconclusive. You must determine whether you believe the witnesses, and whether the statements attributed to the prisoner were made; and you must determine also, whether, if made, they, by what they expressed or what they implied, are of convincing force to sustain the grave charge against the prisoner.

A word at this point upon the form of your verdict. The verdict will be given orally. If a verdict of acquittal, simply the words, "Not guilty." If it is a verdict of murder, with neither of the characteristics of the first degree, the form should be, "Guilty of murder in the second degree." And if it be a verdict of murder, with one or more of the characteristics of the first degree, the form should be, "Guilty of murder in the first degree." Three distinct forms as the case is submitted to you are possible: first, a simple verdict, "Not guilty;" second, "Guilty of murder in the second degree;" third, "Guilty of murder in the first degree."

In dealing with the issue submitted to you, and with the subordinate issues incidental to the main issue, have clearly in mind that you constitute one tribunal of twelve men, and not twelve independent tribunals. Each juror must express his own final conclusion in the verdict to which he assents, and not a mere acquiescence in the conclusion of his fellows. But, in bringing your twelve minds to a common conclusion, you should examine questions with candor, and with a proper regard and deference to the opinions of each other.

In conferring together, you ought to listen to each other's arguments with a disposition to be convinced. The jury room is no place for pride of opinion, or for espousing or maintaining either side of an issue in a spirit of controversy. The single object to be effected is to arrive at a true verdict, and this is best accomplished by deliberation, mutual concession, and due deference to conflicting opinions of fellow jurors. By such means, and such only, in a body where unanimity is required, can safe and just results be obtained. And without this, trial by jury, instead of being an essential aid in the administration of justice, would become a most effectual obstacle to such administration. It would be a sad outcome of this trial if a citizen of the Commonwealth should be wrongly convicted of the great crime charged in this indictment. It would be a sad outcome if justice should fail and the protection of the community by adequate enforcement of the law be denied. It is next to impossible that either of these unfortunate results can be reached if calm deliberation and discussion, impartial consideration of the full significance and convincing force of the evidence on both sides, shall bring a jury of intelligence and experience of your panel to a common conclusion declared in your verdict without fear or favor. Be not misled by any persuasive appeals on the one side or the other that would sway you from the calm conclusion of your own judgment upon the evidence; but, with reverence and solemn fidelity to the oaths which you have taken, render a true verdict. By so doing you secure the abiding approval of your own consciences, and the gratitude of the community that we live under a government of law.

The jury returned to the court room at 11.25 A.M., and was polled.

THE CLERK. Gentlemen of the jury, have you agreed upon your verdict?

THE FOREMAN. We have.

THE CLERK. John O'Neil, hold up your right hand.

The prisoner arose and held up his right hand.

THE CLERK. Mr. Foreman, look upon the prisoner. Prisoner, look upon the foreman. What say you, Mr. Foreman, — is John O'Neil, the prisoner at the bar, guilty or not guilty?

THE FOREMAN. Guilty of murder in the first degree.

THE CLERK. Gentlemen of the jury, hearken to your verdict as the court has recorded it. You upon your oaths do say that John

O'Neil, the prisoner at the bar, is guilty of murder in the first degree. So you say, Mr. Foreman ; so say you all, gentlemen.

THE MEMBERS OF THE JURY. We do.

MASON, C.J. The court desires to express to the jury its recognition of their fidelity in attending closely to the evidence and in discharging the duty that has devolved upon them. You are now excused from further attendance.

Counsel for the prisoner were given until September 6 in which to file exceptions.

COMMONWEALTH OF MASSACHUSETTS.

FRANKLIN, SS., SUPERIOR COURT.

NOVEMBER SITTING, 1897.

COMMONWEALTH v. JOHN O'NEIL.

Nov. 20, 1897.

The court came in at 9 o'clock, Justices Fessenden and Sheldon presiding. The prisoner was in the dock, and the jury, before whom the trial was had, were present.

The clerk was directed to enter upon the records that Chief Justice Mason was unable to be present, on account of ill health.

Mr. KNOWLTON. May it please your Honors, in the case of the Commonwealth v. O'Neil the motion for a new trial was filed on November 18, and I notified my learned friends that I should ask to have it heard this morning.

Mr. BEER. May it please your Honors, when we filed that motion, we had just been informed, as we believed from reliable sources, zealous friends of the defendant, of a fact which would require time for investigation to substantiate; and, taken in connection with what we had discovered on the record since the rendering of the verdict in this case, we were justified in attaching belief to the fact that such facts existed. As soon as it was possible, we put the pleadings on the records, so far as pleadings were concerned, in shape to bring such facts before the minds of this court. We at the same time wrote to his Honor the Chief Justice of this court, informing him, not directly, but in language plain enough, that we could not be ready at this time, — we having been informed that the Commonwealth would insist upon the sentence being given against the defendant to-day, — that we could not be ready with evidence to substantiate the fact that was in the motion, a copy of which we forwarded to his Honor. We also sent to the learned Attorney-General, and the learned District-Attorney, like information and like copies of the motion. We acknowledge the receipt of two telegrams, one from each of these gentlemen now present, which must have been sent immediately upon receipt of our communications to them, that they would insist upon the hearing of these motions. Bearing in mind that the supreme court had taken at least six weeks, and before we had official notice of their action, seven weeks, the notice coming to us last Tuesday of the over-ruling of the exceptions, we thought perhaps there would be

no hasty action in regard to this court, and that our request, communicated in the ways pointed out, would be granted; but, receiving the telegrams, I, being the only one on the ground, hastened to parts far distant from our home, and with meagre information as to the location of persons from whom we should receive evidence of the facts that had been so communicated to us by such reliable sources. We were misdirected, and upon the arrival of the train, at night, at the place, it was found that the party of whom I had been notified was distant five miles, over mountain roads, and no possible way of communicating except to traverse the way upon foot. The next morning I started by foot, at the earliest hour possible in the morning, and travelled on foot that country; and the whole of that day was substantially lost, as I had to wait upon the convenience of other people to bring me back into civilization; so I could not make the proper investigation to substantiate the communication made to us by the friends of the defendant, and thus that branch of the matter remains. The matter of the record which I have alluded to, so far as our copy of the record is concerned, and which justified us, as we shall urge, in putting in the second ground as reason for setting aside the verdict, is this: "William N. Washburn, called as a juror and sworn. He answered the statutory questions in the negative with one exception, — Q. Have you expressed or formed an opinion in relation to the case? A. I have formed an opinion. Q. Such opinions as you have formed, would they in your judgment prevent your weighing the testimony impartially in this case? A. Yes, sir. Q. Are you a constable? A. No, sir. Sworn."

FESSENDEN, J. In the copy of the record we have, it gives the answer, "No, sir," instead of "Yes, sir."

SHELDON, J. I remember the fact, and happen to know that it was in the memory of the Chief Justice that the answer was "No, sir," but, on account of an error in transcribing the notes of the stenographer, it was written as it appears in your copy, that the answer was "Yes, sir." But the original minutes of the stenographer showed upon investigation that the answer was "No, sir." It was an error in transcribing the notes.

Mr. BEER. This is the first information that we have had of the error of the stenographer. There was talk, however, connected with the empanelling of the jury. There was one of the jurors, I cannot tell which, whose answer to such a question seemed to me to be "Yes, sir." Whether it was this juror we have in mind or not, I cannot say, but, looking up and seeing everybody settle down and his Honor the Chief Justice saying, "The juror stands indifferent," I thought I must have been mistaken. But your Honors have investigated this fact, and that is satisfactory to us, and we submit

that we have been in error, led so, unintentionally led so, by the error of the stenographer. With what conference I have had with my brothers, I find it is the unanimous decision, as this correction was made, to leave that matter for the present, that ground of the motion, and I see at present no reason for pressing it at all. So far as any investigation of the subject of which we were informed, there is no substantiation of the information, I am free to state, from the source of information that I could reach yesterday. In regard to this other ground, your Honors, the supreme court having taken so long a time in deliberation upon the law point that was raised, we were justified in believing that there was something that should so occupy the mind of that court, and if there was no such point, it showed the careful, conservative deliberation that was being given to so important a case as this is. I cannot say but we have been treated fairly right throughout by the officers of the court, including the representatives of the prosecution; and, bearing in mind that fairness that had been exhibited, I supposed that under the circumstances,—about a hundred and thirty witnesses having testified here during the eight or nine days,—I supposed that we should not be rushed on to the argument, with such a voluminous amount of evidence in support of the other ground of our motion to-day. So we think, under all these circumstances, and others which must be apparent to this court, considering that we are representing poor people, that we have not had opportunity to prepare such an argument as we think ought to be given in connection with the other ground. If we are pressed on to argument, we are not ready, and I do not know, I have not had time to confer with my brothers as to what might be done in case we are pressed on to argue on that part of the motion. To gain light upon that point, I wish to ask the Attorney-General whether he would press us on to that part of the case to-day?

FESSENDEN, J. If counsel desire time to confer, the court is entirely willing they should have such time.

Mr. BEER. I think, in consideration of our part of the record, it would be only fair.

FESSENDEN, J. You may have time to confer.

The court retired, to give counsel an opportunity for conference.

The justices returned into court at 9.30.

Mr. BEER. May it please your Honors, after conferring, bearing in mind that both of your Honors were present during the whole of the trial, and believing that your Honors have a vivid memory of all

the proceedings in mind, we have agreed to submit the first ground of the motion to your Honors' decision, without argument. As to the second ground, we move that it be stricken from the record.

MR. KNOWLTON. The Commonwealth does not care to be heard upon the first ground, and, as to the second ground, agrees that it may be stricken from the record.

FESSENDEN, J. The second motion may be stricken from the record of the court. As to the first ground of the motion, the court will confer, and announce its decision as soon as reached.

The justices retired for conference, and returned into court at 10 o'clock.

FESSENDEN, J. After careful deliberation, the court feels compelled to over-rule the motion for a new trial.

MR. KNOWLTON. May it please the court, on January 8 of this year, Hattie Evelyn McCloud was murdered. March 4, John O'Neil, the prisoner at the bar, was presented by the grand jury on the charge of having committed that murder. On the 19th of July he was set at the bar for trial. The trial occupied some eight days, and the prisoner, as your Honors know, was most ably defended. On the twenty-eighth day of July, a verdict of guilty of murder in the first degree was rendered. Exceptions were duly taken to the supreme judicial court, which were over-ruled by a rescript filed the 13th of November current. The motion for a new trial has been withdrawn as to part and over-ruled as to the rest. There remains nothing but the solemn duty of moving that the sentence of the law be executed against the defendant, and I therefore move that sentence be pronounced against the prisoner.

The prisoner stood.

FESSENDEN, J. John O'Neil, have you anything to say why sentence of death should not be passed upon you?

THE PRISONER. Yes, sir; I have to say that I am innocent. If I die for this crime, I die innocent.

FESSENDEN, J. John O'Neil, on the 4th of March last, the grand jury of this county returned into this court an indictment against you charging you with the wilful murder of Hattie Evelyn McCloud. To this indictment you pleaded not guilty; and a trial has been had thereon. In all the proceedings the rights accorded by the law to persons accused of crime have carefully been preserved to you. In the selection of an impartial jury you were permitted to exercise your free right to challenge. You met the witnesses against you face to face. You were aided by the Commonwealth, which procured the

attendance of witnesses to testify in your behalf. With patient, intelligent attention on the part of the jury during a somewhat long trial, you were fully heard in your defence. The verdict against you was accepted, recorded and approved by the court. You had a fair trial. Your objections to the rulings of this court at the trial have been passed upon, and, after full arguments, considered and overruled by the supreme judicial court for this Commonwealth. In all you have been aided by able, earnest, zealous counsel, who devoted themselves to your cause with great industry and fidelity. On the conclusion of this trial, it is thus made certain, so far as it can be made certain by any human tribunal, that you are guilty of the offence charged upon you. The painful and imperative duty remains to this Court, by the authority of the supreme power of this Commonwealth, as the ministers of the law, to pronounce sentence, which is, that you, John O'Neil, be removed from this place and detained in close custody in the prison of this county, and thence taken on Friday, the seventh day of January A.D. 1898, to the place of execution, and there be hanged by the neck until you are dead. And may God, of His infinite goodness, have mercy upon your soul.

THE PRISONER. Please can't I be executed a little quicker? It is only killing my folks, keeping me alive. ♡ • ●

APPENDIX.

The exceptions taken at the trial were allowed Sept. 11, 1897, were argued at Springfield before the Supreme Judicial Court Sept. 28, 1897, and were overruled Nov. 11, 1897. The case is reported in the Massachusetts Reports, vol. 169, page 394.

Late in December, 1897, application was made to the governor by the relatives of the defendant for a commutation of sentence to imprisonment for life, which application was denied. A further application for a reprieve, or for commutation of sentence, was also made to the Governor in behalf of the prisoner by Frank J. Lawler, Esq., who was retained for the purpose by the family of the defendant. This application was also denied.

Jan. 5, 1898, upon application of Lyman D. Woodbridge, M.D., professor of medicine at Williams College, who had been employed in the defendant's behalf as medical expert, and who was in attendance during a considerable portion of the trial, another hearing was given by the Governor. The Commonwealth was represented by the Attorney-General; the prisoner by Frank J. Lawler, Esq. The counsel that took part in the trial were present.

Professor Woodbridge argued that from a medical stand-point the evidence presented at the trial was insufficient to prove beyond a reasonable doubt either ~~that~~ the offence of rape had been committed or that the deceased died from strangulation.

Francis J. Canedy, M.D., and Frank H. Zabriskie, M.D., who had testified as witnesses for the Commonwealth at the trial, were called in rebuttal.

After a full hearing, upon consideration of the evidence and arguments, the Governor declined to interfere with the execution of the ~~sentence~~, and the defendant was executed in accordance therewith.

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